



Ministry of Housing
and
Social Development

Liquor Control and Licensing Branch

**Compliance and Enforcement
Policy and Procedures
Manual**

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C&E Desk Reference Manual - Updates

Date	Update Description	Updated Pages
November 2008	<u>Policy Directive 08-08</u> The use of customized licence terms and conditions as tools to increase safety, promote compliance, and prevent violence in and around licensed establishments	<u>Section 6:</u> 6.5 12 6.5.2 12-15 (new pages inserted)
October 2008	<u>Policy Directive 08-06</u> Revision to Liquor Control and Licensing Branch policies concerning performances by exotic dancers and other adult-oriented performers	<u>Section 22:</u> 22.0 1 22.1 1 22.1.5 2 2.1.8 3 2.1.9 3 2.1.10 3-4 2.1.11 5
March 2008	<u>Policy Directive 08-04</u> Designated Smoking Rooms This Directive replaces Policy Directive 02-02	<u>Section 23:</u> 23.4.2 7
February 2008	<u>Policy Directive 08-02</u> Minors in Liquor-Primary establishments located in a Curling Rink and the application process and fee to permit minors into liquor-primary clubs and liquor-primary establishments at recreation centres during banquets and award ceremonies	<u>Section 11:</u> 11.2.3 5
January 2008	<u>Policy Directive 08-01</u> Enhance Fit and Proper Suitability	<u>Section 28:</u> 28.2.1 4 28.2.2 5

There may be a delay before we are able to incorporate the changes noted in the Policy Directive into all relevant branch publications. We regret any inconvenience. The date the change takes effect is the date noted on the Policy Directive.

See Policy Directives page on the Liquor Control and Licensing Branch website for list of recent Policy Directives – www.hsd.gov.bc.ca/lclb/publications/policy/

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SECTION 1: INTRODUCTION

1.0 Purpose

This manual provides direction to liquor inspectors and regional managers on the conduct of their compliance and enforcement duties. This manual is not a complete statement of all policies guiding the branch's Compliance and Enforcement Program. For example, the manual does not include policies and procedures for the enforcement hearing process. While the manual is written primarily for inspectors and regional managers, other staff with compliance and enforcement duties, licensees and stakeholders may also find the manual a useful reference.

The manual has been designed as a tool for inspectors to use on a daily basis as they carry out their compliance and enforcement duties. An accompanying field reference has been developed as a quick reference for inspectors when they are away from the office. The field reference includes only those procedures from this manual that inspectors may need to refer to while conducting inspections or identifying contraventions in the field.

1.1 Overview

This manual closely follows the format of the Licensing Policy Manual. It is divided into 28 sections. Sections 2 through 4 provide useful background information for the Compliance and Enforcement Program. Sections 5 through 9 outline policies and procedures for the major activities associated with the program, such as compliance activities and the enforcement process. The remaining sections outline policies and procedures for identifying the specific contraventions listed in the penalty schedule included in schedule 4 to the regulation.

Sections 5 through 28 are divided into subsections that follow a similar layout. Each subsection begins with a "Policy Rationale" that outlines the reasons why the policies are in effect. This is followed by a segment entitled "Policies," which lists numbered policy statements relevant to the particular activity or contravention and gives authority references for each. The third segment, "Authority References," summarizes all the authority references used in the preceding policies. In most subsections, this segment is followed by "Procedures," which provides detailed direction to inspectors, regional managers and other compliance and enforcement staff on how to perform the activity or identify the specific contravention.

This manual is available both in printed format and through the branch intranet site. The field reference is available only in paper copy.

SECTION 2: OPERATING ENVIRONMENT

2.0 Introduction

The policies and procedures outlined in this manual must be considered in light of the context or environment within which the branch and the Compliance and Enforcement Program operate. The branch's operating environment is largely defined by the Liquor Control and Licensing Act (the Act) and the Liquor Control and Licensing Regulation (the regulation). Other aspects of the operating environment are discussed in this section under the following headings:

- Role of the Branch
- Operating Assumptions and Principles, and
- Strategic Goals.

2.1 Role of the Branch

The mandate of the branch is outlined in sections 3 and 6 of the Liquor Control and Licensing Act. The general manager administers the Act and supervises all licensed establishments and manufacturers of liquor. In doing so, the general manager must:

- issue, renew, amend, transfer, suspend or cancel licences as provided by the Act and regulation
- specify which regulations apply to a licence
- supervise the conduct and operation of licensed establishments
- appoint or designate any person he or she considers advisable as an analyst for the purposes of the Act
- authorize officials to issue licences and permits under the Act, and
- perform all other acts required to properly and efficiently administer his or her responsibilities as defined by the minister and under the Act and regulation.

The following seven distinct functions are the major focus of branch efforts:

- issuing and transferring licences for resale and manufacture of liquor
- regulating and monitoring product advertising
- administering regulatory exemptions for medicinal, toilet, confectionary, cleaning or disinfecting products containing alcohol
- inspecting and educating licensees to ensure they comply with the law
- maintaining public relations with law enforcement, local government and other regulatory agencies
- taking appropriate compliance action for contravention of the Act and regulation, and
- liaising with stakeholders to develop more effective policies and legislation.

Of particular relevance to the Compliance and Enforcement Program are bullets four through six.

2.2 Operating Assumptions and Principles

Operating Assumptions

The functions listed above are based on a number of operating assumptions that contribute to the policies and procedures of the branch. The following assumptions are the most influential ones for the branch:

1. While moderate alcohol consumption may have some modest health benefits, long term excessive drinking has adverse health effects.
2. Alcohol is a drug that, if taken in sufficient quantities, will affect short-term mental judgment and physical dexterity.

3. Although generally seen as a pleasant complement or accompaniment to social occasions, alcohol has addictive properties and can lead to socially unacceptable behaviour when abused.
4. Minors should be protected from the negative effects of alcohol consumption.
5. Neighbourhoods and communities are impacted by the sale and manufacture of liquor and their opinions are essential to licensing decisions.
6. Control of the number and location of liquor primary licensed establishments prevents a proliferation of licensed establishments that may lead to the sale of liquor to minors and intoxicated persons, overcrowding or other actions that may be harmful to the community.
7. It is in the best interests of the liquor and hospitality industries to encourage responsible drinking behaviours that contribute to the well being of their customers and the public.
8. Licence holders are responsible for designing their operations and conducting their businesses in such a way as to realize the outcomes and principles articulated in liquor licensing statutes and regulations.

Operating Principles

The most important elements of the branch operating environment are the operating principles that guide the regulation of liquor in British Columbia. The Act and regulation require that the general manager's decisions be made in the "public interest." The branch has articulated the requirement to act in the public interest in the form of the two operating principles reproduced below. In these operating principles, the branch asserts that the public interest is best served by targeting the negative impacts of alcohol manufacture and sale while, at the same time, appreciating and balancing the unique interests of individuals and communities in the application of any regulations.

Public Safety

It is in the public interest to safeguard individuals and communities from the harm caused by:

- the inappropriate or reckless sale and / or manufacture of alcohol which might arise in instances of destructive competition, and
- the abuse of alcohol and other irresponsible drinking behaviour.
- This principle is aimed at correcting what economists refer to as "market failure." Two types of market failure are primarily associated with the liquor industry:
- destructive competition – a form of severe competition in which industry participants act improperly or even illegally to gain a competitive advantage, and
- spillover effects – negative impacts on individuals and communities, beyond the industry and its clients, which occur as a result of industry activity.

Examples of these types of market failure might include:

- over-consumption as a result of low liquor prices
- unsafe conditions or riotous behaviour caused by overcrowding
- neighbourhoods and communities negatively affected by noise and traffic from poorly operated establishments, and
- violent or abusive behaviour by drunken patrons in the streets or at home.

While a degree of market protection may result from regulation of the industry, this is neither the intention nor the focus of regulation. The purpose of liquor regulation is not to ensure the economic viability of existing licensed establishments but, rather, to safeguard the public interest against harm that may result from industry activity.

Regard for Community Standards

It is in the public interest to have regard for:

- the impacts of alcohol sales and manufacture, and
- the extent to which these impacts are understood and supported by individuals and their communities.

This principle addresses the need to somehow find a balance between competing interests and recognize that different communities have different requirements and standards.

2.3 Strategic Goals

Current branch priorities and goals are also a contributing factor to the operating environment. However, unlike the other factors described in this section, these strategic goals may shift from time to time.

The Ministry of Public Safety and Solicitor General has identified two objectives relating to the branch in its 2004/05 – 2006/07 Service Plan. These objectives and their associated strategies are as follows:

Objective: Local government actively participates in assessing new liquor primary applications

Strategies:

1. Provide local government with community health indicators to better assess licence applications
2. Set terms and conditions for hours, size and entertainment that are consistent with community standards
3. Reduce regulatory requirements and processes that do not impact public safety, and
4. Streamline licensing and enforcement processes.

Objective: Improved industry cooperation to reduce problems associated with liquor misuse

1. Target inspection resources on high-risk establishments and focus inspection and investigations on service to minors, over-service, overcrowding and illicit alcohol
2. Create tools to identify high-risk establishments in consultation with local government, police, schools and licensees, and
3. Improve Server Training Program to strengthen service to minors and over-service education components.

Current goals and objectives are also outlined in the branch service plan for the fiscal year. The 2003 / 04 – 2005 / 06 Liquor Control and Licensing Branch Service Plan identifies the following four long-term goals for the branch:

1. Increased public safety
2. Liquor control decisions that reflect community standards
3. Reduced impacts on social, health and justice programs due to the misuse of liquor, and
4. Increased voluntary compliance by licensees.

SECTION 3: COMPLIANCE AND ENFORCEMENT PROGRAM OVERVIEW

3.0 Introduction

The Compliance and Enforcement Program includes those branch activities focussed on ensuring that the sale and consumption of liquor complies with the requirements of the Act, regulation and terms and conditions of individual licences. The program is administered by the branch's Compliance and Enforcement Division.

The terms "compliance" and "enforcement" each describe a distinct and separate component of the program. Compliance is the desired outcome of the program. For the branch, it means that licensees voluntarily comply with the Act, regulation and terms and conditions of their licences. Program activities that encourage compliance include:

- group information sessions
- inspections
- compliance meetings, and
- stakeholder liaison sessions.

Enforcement is the set of actions taken to correct or halt non-compliance, including identifying and substantiating an alleged contravention. Enforcement activities include:

- issuing contravention notices
- recommending enforcement action
- conducting enforcement hearings, and
- imposing penalties.

This section provides an overview of the Compliance and Enforcement Program organized under the following headings:

- Program Goals
- Role of the liquor inspector, and
- Role of the Licensee.

Although they are integral components of the Compliance and Enforcement Program, this manual does not address the roles of investigators, advocates and others involved in the enforcement hearing process.

3.1 Program Goals

The Compliance and Enforcement Program has the following five goals:

1. Voluntary compliance

To minimize the number of contraventions and achieve voluntary compliance through knowledgeable licensees and early intervention when problems are identified. Licensees are educated through:

- branch publications, including the Guides for Liquor Licensees
- group information sessions
- stakeholder liaison sessions
- compliance meetings, and
- inspections.

2. Focus enforcement on public safety issues

To increase compliance by licensees through enforcement focussed on key public safety issues, such as:

- intoxication
- service to minors
- overcrowding
- illicit liquor
- unlawful activities in licensed establishments, and
- liquor-related community disturbances associated with licensed establishments.

3. Speedy application of consequences for non-compliance

To achieve speedy application of consequences for non-compliance through policy and procedures that ensure a non-compliant licensee's file is reviewed and a decision made as to whether or not to proceed with enforcement action in a timely manner.

4. Effective penalties consistently applied

To create a consistent penalty structure throughout the province by implementing a prescribed suspension and monetary penalty schedule. The schedule sets out categories of contraventions and the suspension and monetary penalty range the branch may impose for a contravention. The penalty schedule ensures that all licensees within the province are subject to similar penalties for similar contraventions.

5. Fair and equitable decision making

To ensure fair and equitable decision making throughout the enforcement process through comprehensive policies and procedures laid out in the Compliance and Enforcement Policy and Procedures Manual, the Act and the regulation.

3.2 Role of the Liquor Inspector

Authority

In accordance with section 4 of the Liquor Control and Licensing Act, liquor inspectors are appointed under the Public Service Act. Liquor inspectors are not enforcement officers or special constables under the Police Act. As a result, inspectors do not have authority to:

- issue violation tickets for Liquor Control and Licensing Act offences
- make arrests, or
- exercise other powers of police officers or peace officers.

Inspectors have the authority to search any licensed establishment and its associated storage facilities. Inspectors can seize illicit liquor, records and things, as appropriate. Inspectors also have the delegated authority to issue 24 hour licence suspensions.

Functions

Each inspector works independently under the direction of a regional manager, and is the key contact and advisor for compliance and enforcement activities within an assigned geographical area. These activities include:

Developing and implementing compliance strategies

- conducting reviews and risk assessments of individual licensed establishments and developing strategies and tactics to address compliance risks
- planning, developing, implementing, managing and coordinating an inspection program to ensure compliance with legislation, regulations and other applicable requirements, and
- making recommendations on a course of corrective action regarding inspections or complaints.

Identifying contraventions

- developing investigation plans regarding the operation of licensed establishments including determining scope and justification, identifying issues, sources of evidence, resources required, logistics and operational details in accordance with standards and practices consistent with case law, policy and legislation
- collecting evidence by interviewing witnesses, obtaining and securing physical evidence, and taking notes and photographs of observations
- investigating serious incidents involving an intoxicated patron to determine if the licensee permitted the person to become intoxicated, and
- identifying contraventions of the Act, regulation or the terms and conditions of a licence and issuing contravention notices to licensees.

Taking enforcement action

- reviewing evidence and file information and determining whether or not to recommend enforcement action for an alleged contravention
- documenting reasons for taking or not taking enforcement action
- preparing notification to the licensee of proposed enforcement action
- preparing waiver notices
- preparing reports and briefs and attending and presenting evidence at enforcement hearings, and
- imposing penalties resulting from an enforcement decision or waiver notice.

Communications and partnering activities

- establishing and maintaining positive relationships with management and employees of licensed establishments
- providing advice and guidance on how the licensee may best comply with the legislation and regulatory framework and minimize enforcement action
- fostering awareness and educating the public, industry, liquor manufacturers, beverage alcohol industry associations and other enforcement agencies concerning the administration of the Act and regulation
- developing and delivering training, seminars and briefings, and
- acting as an expert resource to local government committee meetings, task forces and advisory councils regarding the administration of the Act and regulation.

3.3 Role of the Licensee

Licensee responsibilities are outlined in the appropriate Guide for Liquor Licensees. Each licensee is responsible for understanding and complying with the Act, regulation and terms and conditions of its licence. Licensees are liable for contraventions committed by their employees. Licensees must ensure that their employees comply with the Act, regulation and licence terms and conditions, even when the licensee is not on site. Licensees must cooperate with liquor inspectors, other branch staff and police officers when they inspect their establishments.

SECTION 4: KEY CONCEPTS

4.0 Introduction

There are a number of concepts that provide background necessary for a full understanding of the policies and procedures outlined in this manual. These include broad concepts, such as the principles of administrative law, and narrower concepts that relate to the use of a particular word or term. These key concepts are discussed in this section under the following headings:

- Role of Policy
- Administrative Law Principles, and
- Definitions.

4.1 Role of Policy

Introduction

Policy plays an important role in the work of a regulatory body. To understand this role, inspectors need to be familiar with the relationship between the Act, regulation and branch policy.

Legislation

The primary statement of law is written in legislation. Legislation provides “hard rules” that must be followed without exception or the exercise of discretion. Because legislation sets out hard rules, it is broadly written. The finer points of law are set out in regulation and policy. This allows for greater flexibility and, in the case of policy, the exercise of some discretion.

The Liquor Control and Licensing Act is a broad statement or expression of laws regulating the sale and consumption of liquor. Section 20(2) of the Act, for example, allows the general manager to take enforcement action, including cancelling a licence or imposing a monetary or suspension penalty, but provides few guidelines for imposing those penalties. The regulation and branch policy provide those guidelines.

Regulations

Regulations primarily fill in the details of legislation. Like legislation, regulations are law. However, they are subordinate legislation made under the authority of the statute. This means there must be authority in the legislation for a regulation. In most pieces of legislation a section commonly known as an “enabling section” appears near the end of an Act. The enabling section describes the regulations the regulatory body may develop to support the legislation.

Section 84 is the enabling section of the Liquor Control and Licensing Act. It describes what information and rules the government may set out in regulation. For example, sections 84(2)(s) and (t) of the Act allow for regulations prescribing a schedule of licence suspensions and monetary penalties. Schedule 4 to the regulation outlines the suspension and monetary penalty ranges.

An advantage of regulations over legislation is that they are easier to change or repeal. By amending regulations, government can adapt quickly to changing program needs and operational issues.

Policy

Policy is the next step in filling in the details of legislation. It is an important aspect of the work of all regulatory bodies.

The branch controls policy

Policy, unlike legislation and regulations, is not passed by the government but developed and approved by the branch. Policy is controlled by the branch and reflects its philosophy.

As the needs of industry and the standards of the community shift, the branch can respond quickly by reviewing policy with major stakeholders and amending it when necessary.

Consistent application of the law

Policy provides guidelines that direct the actions of staff and administrators in applying legislation and regulations. Without policy, a regulatory body could not make consistent and equitable decisions regarding the groups it regulates.

Regulatory bodies and administrators need standards and principles to provide a framework for the exercise of their discretionary powers. If there are no criteria to guide decisions, the decisions will be arbitrary and inconsistent over time. The development of criteria through policy structures decisions and the exercise of discretion.

Discretion in policy to ensure fair decisions

Policy does not set out "hard rules." When making a decision affecting a licensee, the branch will consider the Act, the regulation, policy and the circumstances of the situation. Some situations require that the general manager exercise discretion and act in a manner different than that expressed in policy. This is one of the advantages of policy. It can be flexible in a situation when warranted. Unlike legislation that may require one course of action, the general manager can exercise discretion and move outside of policy to ensure that the law is upheld, the public interest is protected and all parties are treated fairly.

Policy supports legislative objectives

Policy must be consistent with the intent and content of written law. A clear understanding of the objectives of legislation is necessary to develop standards and policy. The branch mandate outlined in 2.1 Role of the Branch is drawn from the Act. Branch policy supports this mandate.

Policy is enforceable

Policy is generally binding on program operations and will generally be upheld by a judicial or quasi-judicial body. For example, section 12 of the Act gives the general manager authority to set terms and conditions on a licence. Section 20(1)(a) of the Act allows the general manager to take action against a licensee for failing to comply with a term and condition of the licence. These terms and conditions are expressions of policy.

4.2 Administrative Law Principles

Introduction

The branch has a number of administrative processes in place to facilitate decisions regarding issuing licences and taking enforcement action. The decisions made by the branch through these administrative processes can have serious consequences for licensees.

In their dealings with the branch, licensees have the right to “administrative fairness.” Fairness in administrative law may be summed up as the right of a person to effective participation in the decision making process if the decision may affect that person. The term “administrative fairness” encompasses the following principles that are described in detail in the paragraphs that follow:

- statutory authority or jurisdiction
- fairness
- no abuse of discretion
- neutral decision maker
- right to know the case against you, and
- right to be heard.

Statutory Authority or Jurisdiction

Jurisdiction refers to the statutory authority of an administrative body to undertake a contemplated action or decision. An administrative body can only exercise the powers and duties that are expressed or implied in its enabling statute. An action taken or a decision made by an administrative decision maker without statutory authority is void.

The statutory authority of the branch is derived from the Liquor Control and Licensing Act and regulation. The key provisions regarding licensing and enforcement powers of the general manager are sections 6, 12, 16 and 20 of the Act.

When conducting an investigation or inspecting an establishment, inspectors should remain aware of the jurisdiction of the branch and the specific authorities delegated to them by the general manager. Like the general manager and other branch staff, inspectors must operate within the scope of the jurisdiction set out in the Act and the regulation.

Fairness

Licensees should not be subject to the arbitrary application of rules but should be treated in a similar manner. This does not mean identical treatment but an objective approach to each situation.

Gathering and reviewing evidence is an important part of this principle. It is the role of the inspector to gather enough evidence to establish that a contravention occurred. That evidence is reviewed and a course of action taken based on the particular circumstances of the contravention and the compliance history of the licensee.

No Abuse of Discretion

This concept requires that an administrative body make decisions based on law, facts and policy and not on any one person’s opinion or feelings. It also requires that a decision maker must not allow their discretion to be fettered by policy. While policy is important, it is not binding in each and every case. The decision maker must consider all relevant factors when applying policy.

Neutral Decision Maker

A decision maker must approach each situation with an open mind and consider only relevant information. Fairness requires that the decision maker must not have any apparent bias with respect to the outcome of a particular situation. The principle of a neutral decision maker does not require a decision maker who is independent of the regulatory agency taking enforcement action. What is required is that the decision maker approaches each situation with an open mind and makes reasoned and balanced decisions.

The Act gives the general manager broad authority to supervise the conduct and operation of licensed establishments and take enforcement action against licensees. This results in a situation where the general manager, generally through his or her delegates, acts both as investigator and adjudicator. Such overlap of functions, where authorized by statute, does not in itself give rise to a reasonable apprehension of bias, so long as there is adequate separation between the persons performing each function.

Right to Know the Case Against You

This principle requires that the branch disclose to a licensee the enforcement action the branch will recommend to the general manager in an enforcement hearing, the facts that support the proposed action and a summary of the evidence gathered by the branch. This information allows a licensee to take remedial action to prevent further contraventions and answer the allegation.

The branch's enforcement hearing rules require full disclosure to the licensee of all information that the branch will be relying on during the enforcement hearing. The rules also require the licensee to disclose to the branch information about licensee witnesses and a summary of the argument the licensee will make at the hearing.

Right to be Heard

The right to be heard means that the licensee has the right to present their case, whether in person or in written form, before the general manager makes a decision. The general manager has the power under section 20(2) of the Act to take immediate enforcement action against a licensee without a hearing. However, in order to ensure a licensee's right to be heard, the general manager will generally hold an enforcement hearing to allow the licensee an opportunity to present evidence, bring witnesses and make argument about whether a contravention occurred and / or the appropriate penalty.

4.3 Definitions

General Manager

The term "general manager" refers to both the general manager in person and delegates of the general manager. The general manager must administer the Act and supervise all licensed establishments and manufacturers of liquor. Of course, in practice the general manager does not do all of the operational work of the branch. To perform all the functions associated with this mandate, the general manager delegates authority to others. For example, inspectors, regional managers and adjudicators all carry out the duties of the general manager. For the purposes of this manual, the term "general manager" has been used both for consistency and because the general manager has the legal authority to perform the functions required by the Act. However, the reader must be aware that delegates of the general manager may take the action or have the authority of the general manager in certain situations.

Inspector

Wherever this manual uses the term "inspector," the policies and procedures apply to any other branch staff member performing the duties of a liquor inspector. For example, branch investigators and regional managers may participate in inspections of licensed establishments and are governed by the same policies and procedures applicable to inspectors.

Licensee

"Licensee" includes both the licensee of record and any person acting in the place of the licensee, e.g., a manager or person in charge of an establishment in the licensee's absence. The procedures for identifying specific contraventions often refer to the inspector interviewing the licensee. This does not mean that the inspector must contact the licensee of record. It means that, if a contravention is identified during an inspection, the inspector may speak to the licensee or whoever is apparently in charge of the establishment at that time.

Standard of Proof

The Supreme Court of British Columbia has confirmed that the appropriate standard of proof for contraventions of the Act and regulation is the civil standard of "on a balance of probabilities" rather than the criminal standard of "beyond a reasonable doubt" (*Sentinel Peak Holdings Ltd. v. The General Manager, Liquor Control and Licensing Branch*, 2004 BCSC 885, *New World Entertainment v. General Manager Liquor Control and Licensing Branch*, 2004 BCSC 616 and *Zodiac Pub v. General Manager, Liquor Control and Licensing Branch*, 2004 BCSC 96).

On a balance of probabilities means that:

- the evidence forms reasonable grounds for the presumption that the contravention occurred
- there is a likelihood or the appearance of truth, and
- there is more evidence in favour of the conclusion that a contravention occurred than against the conclusion.

Permit / Authorize

Several sections of the Act describe the licensee as either "authorizing" or "permitting" a contravention. For example, section 36(2)(a) states that a licensee must not authorize or permit gambling in an establishment. It is harder to prove that a licensee authorized a contravention than to prove a licensee permitted a contravention.

In order to permit a contravention, the licensee does not need to have direct knowledge of the contravention but does need to have contributed to the occurrence of the contravention through their action or inaction. The evidence does not need to establish the knowledge of the licensee. The evidence needs to demonstrate the failure to take appropriate precautions to prevent the contravention.

For the licensee to authorize a contravention such as gambling, the licensee must give a person the right or permission to gamble, or sanction or empower a person to gamble in the establishment. The evidence collected should establish knowledge of the licensee and, in some manner, a sanctioning of the activity, such as:

- blatant gambling that is observed by the licensee with no action taken to prevent or end the gambling
- advertising that indicates gambling is allowed or promotes gambling events in the establishment, or
- the licensee collected a percentage of the bet.

Due Diligence

Where the licensee can demonstrate that they exercised "due diligence," they will not be held responsible for the occurrence of a contravention. In *Whistler Mountain Ski Corp. v. British Columbia (General Manager Liquor Control and Licensing Branch)* 2002 BCCA 426, the BC Court of Appeal held that due diligence is available to licensees as a defence to all proceedings under section 20 of the Liquor Control and Licensing Act and not just for those contraventions where the licensee is described as "permitting" the contravening activity.

The degree of diligence necessary to guard against contraventions will depend upon the circumstances faced by the licensee. In *A.M.P.M. Holdings Ltd (c.o.b. Oasis Hotel) v. British Columbia (Liquor Control and Licensing Branch)*, [2003] B.C.L.I. No. 1, the Liquor Appeal Board held that the proper standard to determine due diligence is whether the licensee took all reasonable measures to avoid the occurrence of the contravention. What constitutes "all reasonable measures" depends on the nature of the alleged contravention and the circumstances particular to the licensee. It also depends on whether the licensee has had previous warning of the alleged contravention and the steps that might be taken to prevent the recurrence of the contravention.

The defence of due diligence will not be available to a licensee who simply asserts that he or she has policies in place that are designed to avoid contraventions, and that an employee failed to follow those policies. The licensee must show that the policies would be effective if followed, that staff are trained in those policies and that staff are adequately supervised to ensure that those policies are being followed.

In the case of permitting a minor on the premises, to demonstrate due diligence the licensee must be able to provide evidence of all of the following four items. It is not sufficient evidence of due diligence if a licensee has only implemented some of these items:

- written policies regarding checking for identification
- training of staff on implementation of the policy
- consistent requests for two pieces of valid identification when verifying a patron's age, and
- the opportunity to clearly examine and consider the authenticity of identification in adequate lighting conditions.

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If one or more contravention notices have been issued to the licensee in the recent past for contraventions involving minors, this may also be considered as evidence that the licensee is not exercising due diligence.

Directing Mind

Many liquor licensees are corporate entities or employers with a number of employees responsible for various areas of their operations. In these situations, the BC Supreme Court has held that the licensee must demonstrate that due diligence was exercised by the person who was the "directing mind" of the licensee in relation to that part of the licensee's operation where the contravention occurred (*The Plaza Cabaret v. General Manager, Liquor Control and Licensing Branch*, 2004 BCSC 248). The directing mind of a corporate licensee need not be an inspector or director of the corporation. The directing mind would be the individual or individuals who had sufficient authority in respect of the sphere of relevant operations. Depending upon circumstances, this could be a general manager, shift manager or a bartender.

Compliance History

"Compliance history" is defined in section 1(2) of the regulation. The definition refers to the compliance history of the licensee and not simply the history of an establishment. This means that when the Act requires consideration of the compliance history, such as in section 20(2.2), the history of all the establishments owned by the licensee and other matters related to the licensee will be reviewed, not just the history of the establishment where the contravention under consideration occurred.

Section 1(2) of the regulation defines compliance history as:

- **a contravention that has been found to have occurred.** This means a contravention where the licensee has waived the opportunity to a hearing and agreed that the contravention occurred, or a contravention that the general manager determines occurred.
- **offences under the Act of which the licensee has been convicted.** This means offences under the Act that are considered by a court and where the court finds the offence occurred.
- **offences under other prescribed Acts of which the licensee has been convicted.** This means offences prescribed under section 20(3) of the Act and set out in the regulation, that are considered by a court and where the court finds the offence occurred.
- **any other matter referred to in section 20(1) of the Act.** For example, this includes the suspension of a municipally granted licence that the licensee is required to hold in order to operate the licensed establishment, such as a business licence, and
- **the enforcement actions associated with those contraventions, offences or matters.** This means, if a licensee was suspended for five days for serving minors, both the contravention – serving minors – and the penalty – five days – are part of the compliance history.

The compliance history is important for a number of reasons. Most particularly, it will be considered when a penalty is being determined for a contravention. If a licensee has no compliance history, depending on the nature and circumstances of the contravention, the penalty may be at the low end of the applicable penalty range in schedule 4 to the regulation. If a licensee has a long compliance history, the general manager may consider imposing a penalty greater than the range set out in schedule 4.

Licence Terms and Conditions

Section 20(1)(a) of the Act states that the general manager may take enforcement action against a licensee for the licensee's failure to comply with a term or condition of their licence. Schedule 4 to the regulation indicates that it is a contravention to fail to comply with the terms and conditions of the licence respecting capacity of the licensed establishment (items 14 and 15) or to breach any terms and conditions of the licence that are not specifically referred to elsewhere in the schedule (item 46).

Terms and conditions particular to an individual licence, such as capacity, may be found by referring to the face of the licence. In addition, under the authority of section 12(2) of the Act, the general manager has imposed a number of general terms and conditions on all licensees with respect to general operations, entertainment and relations with liquor manufacturers. These terms and conditions are outlined in the appropriate Guide for Liquor Licensees in British Columbia (the Guide) for each type of licence. Inspectors should refer to the face of the licence and / or to any letter issued to the licensee by the branch, such as the site and community assessment approval letter, to determine whether the licensee has been authorized to operate under terms and conditions that differ from those outlined in the Guide. A breach of either the terms and conditions outlined on the licence, or those contained in the Guide, is a contravention.

SECTION 5: COMMUNICATION AND PARTNERING ACTIVITIES

5.0 Introduction

Through its communication and partnering activities, the Compliance and Enforcement Program maintains positive relationships with licensees and other stakeholders with an interest in liquor licensing and enforcement, including police, local government, First Nations and other regulatory agencies.

Close liaison with police forces is integral to the Compliance and Enforcement Program. Police forces throughout the province take part in a walk-through program consisting of regular, unannounced visits to licensed establishments. The police walk-through program plays an important role in preventing contraventions and promoting a greater awareness of the laws that licensees, staff and patrons must follow.

Local government and First Nations have a direct role in the liquor licensing process and have an interest in ensuring that liquor regulations are observed and the licensed establishment enjoys the support of the community in which it is located. Local government is responsible for protecting the peace and good order of communities and is often the first to receive complaints if problems arise with the operation of a licensed establishment.

Ongoing communication with licensees ensures they are equipped with the knowledge required for voluntary compliance with the Act, regulation and terms and conditions of their licences. Communicating and partnering with police, local governments and other regulatory agencies ensures these stakeholders are knowledgeable about liquor laws and policies and promotes cooperation in addressing issues of non-compliance.

Policies and procedures for communication and partnering activities are described in this section under the following headings:

- Final Licence Inspections
- Administrative Review Sessions
- Stakeholder Liaison Sessions
- Briefing and Training Sessions, and
- Multi-agency Inspections.

5.1 Final Licence Inspections

Policy Rationale

At the time of the final licence inspection, the applicant has met nearly all the requirements for licensing. The inspector performs the final licence inspection to ensure that the applicant has realized, in practice, the commitments made on paper.

The final licence inspection offers an opportunity to discuss the practicalities of meeting the terms and conditions of the liquor licence. It is at this stage that the licensee and the inspector establish a working relationship. Often, it is this relationship that determines whether or not there will be compliance problems later on.

Policy

5.1.1 Final licence inspection frequency

The final licence inspection takes place:

- once per establishment at the time of licence issue
- when there have been structural changes
- when a licence is transferred, or
- when there is an external transfer of the licensee's shares or a change in a third party agreement or resident manager.

[Liquor Control and Licensing Branch Policy]

5.1.2 Final licence inspections for liquor-primary licences

Upon notification from a liquor-primary applicant or licensee that all construction or building alterations are complete, or that a transfer application is complete, the inspector will inspect the establishment to ensure compliance with the approved floor plans and with all statutory or policy requirements. Whenever possible, the inspector will review the terms and conditions of the liquor-primary licence with applicants at a group information session conducted prior to the final licence inspection.

[Liquor Control and Licensing Branch Policy]

5.1.3 Final licence inspections for food-primary licences

Whenever possible, inspectors will review the terms and conditions of food-primary licences with applicants and licensees at a group information session conducted prior to, or as soon as possible after, licensing.

Inspectors will examine the premises to ensure:

- compliance with the approved floor plan
- the establishment contains the necessary operating equipment, and
- the establishments meet all other requirements for a food-primary licence

during their first inspection of the establishment after the information session.

[Liquor Control and Licensing Branch Policy]

5.1.4 Final licence inspections for UBrew and UVin licences

Upon request of a UBrew or UVin licence applicant, the inspector will conduct a final licence inspection of the premises to ensure compliance with all regulatory requirements. At the time of the inspection, the inspector will review the terms and conditions of the UBrew or UVin licence with the applicant.

[Liquor Control and Licensing Branch Policy]

5.1.5 Reviewing occupant load during final inspection

If the final licence inspection or information from the responsible local government or First Nation indicates that the occupant load of the establishment is not equal to, or less than, the approved person capacity, the inspector will inform the applicant or licensee that the licence or structural alteration will not be approved until the licensee either:

- alters the building construction so that the occupant load is equal to, or less than, the approved person capacity, or
- alters the application to request a greater person capacity.

[Liquor Control and Licensing Regulation, section 6]

Authority References

Liquor Control and Licensing Regulation, section 6; Liquor Control and Licensing Branch Policy

Procedures

1. Conducting group information sessions
 - (a) When contacted by a food-primary or liquor-primary applicant, third party operator or resident manager, the inspector will inform the person of the date and time for the next food-primary or liquor-primary group information session.
 - (b) If it is not practical for the person to attend a group information session due to the location of the establishment, the inspector will schedule a final licence inspection and review the terms and conditions of the licence during the final licence inspection.
 - (c) At the session, the inspector will:
 - present the appropriate slide show
 - administer a standard quiz to session attendees and mark the quiz by soliciting answers from the attendees, and
 - invite the attendees to raise any other questions.
 - (d) At the conclusion of the session, the inspector will obtain the attendee's signature on the inspector interview information sheet.
2. Scheduling and planning for final licence inspections for new licence or structural alterations
 - (a) Upon completion of the group information session, the inspector will schedule a final licence inspection of the establishment.
 - (b) The inspector will plan for the final licence inspection by reviewing the approval in principle given to the establishment, including the approved menu for food-primary licences.
 - (c) The inspector will contact the licensee prior to the final licence inspection to ensure that the establishment's floor plans have been approved and stamped with the occupant load by the responsible local authority. If the establishment's floor plans have not been approved, the inspector will reschedule the final licence inspection.
3. Conducting the final licence inspection for a structural alteration
 - (a) If the inspection is for a structural alteration to an existing establishment, the inspector will inspect the establishment to ensure that the structural alterations have been constructed in accordance with any approved plans and with all statutory and policy requirements.
 - (b) If the results of the final inspection are not satisfactory, the inspector will inform the licensee of the deficiencies and invite the licensee to contact the inspector for another final inspection once the deficiencies have been remedied.
 - (c) The inspector may take photographs of the structural alterations. The inspector will file a copy of the photographs on the field establishment file and forward the photographs electronically to headquarters licensing division for filing on the headquarters establishment file.
4. Conducting the final licence inspection for a new licence
 - (a) The inspector will bring the appropriate inspector interview information sheet signed by the applicant at the group information session.
 - (b) The inspector will inspect the establishment to ensure that the establishment has been constructed in accordance with any approved plans and with all statutory and policy requirements.
 - (c) If the results of the final licence inspection for a new licence are not satisfactory, the inspector will inform the applicant of the deficiencies and invite the applicant to contact the inspector for another final licence inspection once the deficiencies have been remedied.

- (d) The inspector may take photographs of the establishment to show the interior design of the premises and exterior signs.
 - (e) The inspector will document the final licence inspection on the inspector interview information sheet.
 - (f) The inspector will outline the floor plans for the establishment and attach to the inspector interview information sheet.
 - (g) The inspector will:
 - mail the inspector interview information sheet and attachments to headquarters licensing division, and
 - forward electronically to headquarters licensing division any photographs taken during the final licence inspection.
5. Recording the final licence inspection
- (a) The inspector will record the final licence inspection on POSSE.
 - (b) The inspector will document any conversations with the applicant or licensee, areas of potential concern or follow-up required in the inspector's notebook.

5.2 Administrative Review Sessions

Policy Rationale

Administrative review sessions are regularly scheduled sessions for licensees where inspectors can review documents to ensure that the licensee has retained ownership and control of the establishment and is continuing to operate in compliance with the terms and conditions of the licence. The administrative review session also provides licensees with an opportunity to ask the inspector questions and clarify any problems.

Policy

5.2.1 Frequency of administrative review sessions

Liquor-primary licensees must attend an administrative review session once every two years. Other licensees must attend an administrative review session once every three years.

[Liquor Control and Licensing Branch Policy]

5.2.2 Failure to attend an administrative review session

Licensees who fail to attend an administrative review session within the specified time period may be issued a contravention notice for neglecting or failing to produce documents and records.

[Liquor Control and Licensing Act, section 73; Liquor Control and Licensing Regulation, section 34]

5.2.3 Scheduling administrative review sessions for food-primary and liquor-primary licences

Whenever possible, administrative review sessions for food-primary and liquor-primary licensees will be conducted as group sessions. Administrative review sessions may be combined with final licence inspection group information sessions.

[Liquor Control and Licensing Branch Policy]

5.2.4 Conducting administrative review sessions for liquor-primary and food-primary licences

During the administrative review session, the inspector will review whether the establishment is being operated as approved by the branch. The licensee must produce the following documents for the inspector's review:

- liquor licence
- official floor plans
- lease or title documents for the property
- copies of Responsible Beverage Service certificates for the licensee, managers and staff
- liquor registry, and
- licensee guide.

The inspector will confirm:

- the licensee and establishment name
- there has been no change in ownership
- there have been no internal or external transfer of shares or capital stock, or capital stock of any holding company, if the licensee is a corporation
- a valid lease or title interest exists
- whether a third party use agreement exists
- all staff meet the Responsible Beverage Service certification requirements
- the official floor plans are available, and
- the licensee has purchased liquor through the Liquor Distribution Branch.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 73; Liquor Control and Licensing Regulation, section 34;
Liquor Control and Licensing Branch Policy

Procedures

1. Scheduling administrative review sessions

The inspector will inform the food-primary or liquor-primary licensee of the date and time of the next group administrative review session. For other types of licensees, or where it is not practical for a food-primary or liquor-primary licensee to attend a group information session due to the location of the establishment, the inspector will schedule an individual administrative review session.

2. Conducting group administrative review sessions

- (a) The inspector will collect the completed forms and documents from the licensees.
- (b) The inspector will present the appropriate slide show.
- (c) During the slide show, the inspector will review the forms and documents collected from the licensees. The inspector will note any areas of concern or areas for discussion with licensees.
- (d) The inspector will administer a standard quiz to session attendees and mark the quiz by soliciting answers from attendees.
- (e) The inspector will invite attendees to raise any other questions.

3. Documenting and recording the administrative review session
 - (a) The inspector will document the results of the administrative review session on the administrative review session form. The inspector will discuss any noted areas of concern or questions with the licensees as they retrieve their documents at the end of the group session. The inspector will identify on the form any deficiencies, along with the proposed action to rectify the deficiencies.
 - (b) The licensee or manager will sign the administrative review session form.
 - (c) The inspector will record the administrative review session on POSSE.
4. Distributing the administrative review session form
 - (a) The inspector will mail one copy of the form to headquarters for filing on the headquarters establishment file.
 - (b) The inspector will file one copy of the form on the field establishment file.

5.3 Stakeholder Liaison Sessions

Policy Rationale

Stakeholder liaison sessions, such as licensee staff meetings or industry association meetings, provide the branch with an opportunity to educate the liquor industry, licensees and their staff on liquor laws and policies.

Policy

5.3.1 Definition of stakeholder liaison session

A stakeholder liaison session is a session attended by an inspector that meets the following criteria:

- attendees include licensees and / or their employees, or stakeholder groups that include licensees and / or their employees as members
- the order of business includes a discussion of issues regarding compliance with liquor licence terms and conditions, and
- the session is not a compliance meeting or part of an inspection process.

[Liquor Control and Licensing Branch Policy]

5.3.2 Participating in stakeholder liaison sessions

Inspectors will pursue opportunities to organize, host and participate in stakeholder liaison sessions within their areas of responsibility. Inspectors may invite representatives from other agencies to participate in stakeholder liaison sessions.

[Liquor Control and Licensing Branch Policy]

5.3.3 Obtaining approval of stakeholder liaison session presentations

The content of all presentations must be provided to the inspector's regional manager in advance of the presentation in order for the regional manager to obtain branch approval of the presentation.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

5.4 Briefing and Training Sessions

Policy Rationale

Briefing and training sessions with agencies such as police, fire departments, local governments or First Nations provide an opportunity for inspectors to develop working relationships with staff from other regulatory and law enforcement agencies within their areas of jurisdiction. They also provide inspectors with an opportunity to share information regarding liquor laws and policies, branch priorities, operational issues or particular areas of concern.

Policy

5.4.1 Participating in briefing and training sessions

Inspectors will pursue opportunities to organize, host and participate in briefing and training sessions with other agencies within their areas of responsibility.

[Liquor Control and Licensing Branch Policy]

5.4.2 Obtaining approval of briefing and training session presentations

The content of all presentations must be provided to the inspector's regional manager in advance of the presentation in order for the regional manager to obtain branch approval of the presentation.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

5.5 Multi-Agency Inspections

Policy Rationale

Multi-agency inspections are an opportunity for enforcement personnel from a number of regulatory agencies to work cooperatively to address issues of non-compliance in licensed establishments. Often, an establishment that is contravening liquor laws and policies is also contravening other regulations or bylaws.

Policy

5.5.1 Participation in multi-agency inspection teams

Inspectors will pursue opportunities to organize and participate in multi-agency inspection teams within their areas of responsibility.

[Liquor Control and Licensing Branch Policy]

5.5.2 Role of the primary inspector

Each multi-agency inspection team that the branch is participating in will include a primary inspector and may include any number of additional inspectors. The primary inspector will be responsible for liaising with the other members of the team, assigning inspector roles and conducting any follow-up activities resulting from the multi-agency inspection, for example, issuing contravention notices and recommending enforcement action.

[Liquor Control and Licensing Branch Policy]

5.5.3 Members of multi-agency inspection teams

If the branch is organizing a multi-agency inspection team, the primary inspector will consider whether the team should include representatives from:

- police
- municipal by-law enforcement
- public health, or
- fire department.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

SECTION 6: COMPLIANCE STRATEGIES

6.0 Introduction

Inspectors have a variety of strategies at their disposal in order to achieve voluntary compliance. Strategies with an educational focus, including final licence inspections, administrative review sessions and stakeholder liaison sessions, are discussed in Section 5 Communication and Partnering Activities. This section includes those strategies that are focussed on identifying non-compliance or responding to non-compliance other than through the enforcement process. Policies and procedures for these compliance strategies are presented in this section under the following headings:

- Scheduling and Planning Inspections
- Conducting Inspections
- 24 Hour Suspensions
- Compliance Meetings, and
- Other Compliance Strategies.

6.1 Scheduling and Planning Inspections

Policy Rationale

Inspections are scheduled and planned so that branch resources are targeted to high priority establishments and time spent in the field is used to best advantage. The branch has developed a system of compliance ratings that provides inspectors with the information necessary for prioritizing establishments for inspection. High priority establishments are those with recent instances of non-compliance and those with unconfirmed or undetermined compliance ratings. Establishments that comply voluntarily are given a lower priority.

Policies and procedures for scheduling and planning final licence inspections are included in 5.1 Final Licence Inspections.

Policy

6.1.1 Compliance ratings

Compliance ratings classify licences based on both their past and current levels of compliance. Possible ratings are:

- voluntary compliance – no contravention notices in the past six months
- acquired compliance – contravention notice(s) in the past six months with at least one subsequent inspection that did not result in a contravention notice
- non-compliance – contravention notice(s) in the past six months with no subsequent inspections that did not result in a contravention notice, or
- compliance undetermined – no inspections completed to date (excluding final licence inspections).

[Liquor Control and Licensing Branch Policy]

6.1.2 Compliance status

Compliance status is used in conjunction with compliance ratings to establish the validity of the compliance rating. Compliance status is either:

- confirmed – last inspection was current enough to update quarterly compliance rating, or
- unconfirmed – last inspection was not current enough to update quarterly compliance rating so last confirmed compliance rating was carried over.

[Liquor Control and Licensing Branch Policy]

6.1.3 Prioritizing establishments for inspections

Inspectors will give a high inspection priority to establishments where:

- the licensee is serving a suspension and an inspection is required in accordance with 9.7 Imposing Penalties
- the licence has a non-compliance rating
- the compliance status of the licence is unconfirmed
- the compliance rating of the licence is undetermined
- complaints about the establishment have been received
- a follow-up inspection is required as a result of a contravention notice or a potential compliance problem, or
- a licensee has requested a final licence inspection.

[Liquor Control and Licensing Branch Policy]

6.1.4 Scheduling inspection times

Inspections will be conducted at different times and on different days both during, and beyond, the operating hours of an establishment. Inspectors will schedule inspection times based on the following factors:

- the proximity of establishments within a geographical area
- estimated length of time for the inspection
- operating hours of the establishment, and
- time of day in which previous contraventions or concerns occurred.

Inspectors will schedule inspections so as to minimize travel time between destinations and will plan to stay overnight when they will be more than 150 km from the field office and outstanding duties remain in the area at the end of the work shift. Where an establishment has more than one licensed area, such as a hotel, the inspector will generally inspect all licensed areas on one visit.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

Procedures

1. Scheduling inspections

- (a) After each inspection where a contravention notice is issued or a potential compliance problem identified, the inspector will schedule a follow-up inspection or phone call to determine whether the licensee has taken action to resolve the problem or prevent further occurrences of the contravention.

(b) On a regular basis, the inspector will review:

- any suspension penalties scheduled for establishments
- LPC's and complaints received
- requests for final licence inspections
- the list of establishments with unconfirmed compliance ratings
- the list of establishments with undetermined compliance ratings, and
- the list of establishments with non-compliance ratings
- and determine which establishments are a high priority for inspection.

(c) Based on the list of high priority establishments, the inspector will schedule inspection times.

2. Planning for an inspection

(a) Prior to conducting an inspection, the inspector will review the field establishment file to become familiar with the establishment and note areas that require observation during the inspection.

(b) The inspector will plan for the inspection by considering the following questions:

- what type of inspection is required
- is the inspection the result of an LPC or a complaint? If so, what is the nature or content of the LPC or complaint?
- should other persons be involved in the inspection, e.g., other inspectors or police
- will it be necessary to speak with the licensee or a manager during the inspection
- are there past concerns for which the licensee should have taken follow-up action, and
- what forms and materials will be required.

6.2 Conducting Inspections

Policy Rationale

As part of its role to supervise the operation of establishments, the branch conducts inspections. Inspections provide an opportunity for inspectors to view how a licensee is operating the establishment and identify whether the manner of operation is likely to lead to non-compliance. If potential compliance problems are identified, the inspector can provide advice to the licensee on what steps to take to avoid future problems. Inspections also assist in ensuring compliance with the Act, regulation and terms and conditions of a licence by providing evidence of ongoing branch interest and attention.

Policy

6.2.1 Authority for inspections

To obtain information respecting the administration or enforcement of the Act or regulations, inspectors may inspect:

- premises of any person set apart or used as a warehouse for the storage of liquor, and
- establishments licensed under the Act, including any area within the premises where liquor is manufactured, stored or served.

[Liquor Control and Licensing Act, sections 1(1) and 73(1)(b)]

6.2.2 Conducting an inspection undetected

Inspectors may attempt to conduct an inspection or part of an inspection undetected in order to view the general management of an establishment and the conduct of staff when they do not know they are being observed.

[Liquor Control and Licensing Branch Policy]

6.2.3. Purchasing liquor during an inspection

An inspector will only purchase liquor during an inspection where the inspector is trying to conduct the inspection undetected and:

- it is necessary in order to maintain anonymity, or
- it is necessary in order to gather evidence of a contravention with respect to the sale or service of liquor.

[Liquor Control and Licensing Branch Policy]

6.2.4 Consuming liquor during an inspection

An inspector may consume liquor during an inspection only where it is necessary in order to maintain the appearance of a customer. If an inspector finds it is necessary to consume liquor, the inspector will use one or more of the following techniques to limit liquor consumption:

- consume only part of a drink
- have one inspector act as a "designated driver" who consumes only non-alcoholic beverages
- purchase low alcohol content liquor products
- avoid ordering drinks in clear glass containers where the level of fluid can clearly be seen, and / or
- utilize games that may be present in the establishment to provide an activity and avoid consumption.

[Liquor Control and Licensing Branch Policy]

6.2.5 Purchasing and consuming food during an inspection

Inspectors may purchase and consume food during an inspection to:

- limit the effects of liquor consumption, and / or
- maintain the appearance of a customer.

[Liquor Control and Licensing Branch Policy]

6.2.6 Claiming liquor and food purchases

Inspectors may claim liquor and food purchases made during an inspection in accordance with policies 6.2.3 and 6.2.5 above on their expense claims.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 1(1) and 73(1)(b); Liquor Control and Licensing Branch Policy

Procedures

1. Conducting an inspection of a food-primary or liquor-primary establishment
 - (a) Before entering the establishment, the inspector will observe:
 - whether there is a line up of patrons waiting to enter the establishment
 - advertising or signs on the outside of the establishment, and
 - any disturbance occurring outside the establishment
 - (b) The inspector will enter the establishment and note the time.
 - (c) The inspector will make an initial observation of the establishment, including:
 - activities at the door to screen identification, control the number of patrons in the establishment and control entry of intoxicated persons
 - the number of staff
 - the number of patrons
 - patron behaviour, and
 - atmosphere.
 - (d) If appropriate, the inspector will advise the licensee of the inspection.
 - (e) If appropriate, the inspector will question the licensee on any previous concerns and what follow-up action has been taken.
 - (f) The inspector will make a critical observation of the patrons, entertainers, staff and physical condition of the establishment as the inspector moves through the premises. Items that the inspector should be alert to during the inspection include:
 - posting of licence and approved floor plans
 - presence of minors
 - whether staff are consistently requesting two pieces of identification when verifying that a patron is not a minor before serving them liquor
 - gambling
 - unlawful activities
 - disorderly or riotous conduct
 - intoxicated persons
 - presence of weapons
 - overcrowding
 - whether a restaurant is not operating in a manner primarily focused on the service of food
 - unauthorized games or entertainment
 - management or staff consumption
 - liquor in unauthorized areas
 - liquor promotions, contests or advertising
 - structural changes, and
 - public safety concerns, e.g., fire hazards, exits, fire escapes.
2. Conducting inspections of UBrews and UVins
 - (a) Before entering the establishment, the inspector will observe advertising or signs on the outside of the establishment.
 - (b) The inspector will enter the establishment and note the time.
 - (c) The inspector will advise the licensee of the inspection, unless the inspector is attempting to conduct the inspection undetected.

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- (d) If appropriate, the inspector will question the licensee on any previous concerns and what follow-up action has been taken.
 - (e) The inspector will observe and note the following:
 - the activities performed by the staff and the customers, in particular, whether customers or staff are pitching yeast
 - the general operation of the establishment including whether:
 - the carboys are adequately tagged
 - invoices are provided to customers
 - customers pay before manufacturing
 - customers are bottling and removing the product, and
 - hours of operation
 - whether finished product is offered for sale
 - any indication that product is not being used solely for private consumption
 - whether there are minors working as staff and the level of supervision
 - whether there are minors in the establishment and their activities in the establishment, and
 - the advertising of the establishment.
 - (f) The inspector will review the invoices and customer acknowledgments.
 - (g) The inspector will review all other required records of the establishment.
3. Conducting inspections of wineries
- (a) Before entering the establishment, the inspector will observe advertising or signs on the outside of the establishment.
 - (b) The inspector will enter the establishment and note the time.
 - (c) If appropriate, the inspector will advise the licensee of the inspection.
 - (d) If appropriate, the inspector will question the licensee on any previous concerns and what follow-up action has been taken.
 - (e) The inspector will inspect the manufacturing area and equipment to ensure that the winery has the capability to produce at least 4500 litres of wine per year.
 - (f) The inspector will observe activities occurring in any sampling area to ensure that no more than 150 ml of samples are being sold to any one person.
 - (g) The inspector will observe activities occurring within any winery lounge, paying particular attention to those items listed in procedure 1(f) above.
 - (h) The inspector will observe activities occurring within any special event area, paying particular attention to those items listed in procedure 1(f) above.
 - (i) The inspector will observe activities occurring within any designated picnicking area to ensure that:
 - products are not being sold or served in the picnicking area
 - the picnicking area is only operated during daylight hours
 - the picnicking area has a clearly defined boundary and is no more than 1,000 square feet in size, and
 - the picnicking area is open to the elements with no structures or heaters.
 - (j) The inspector will observe activities occurring in association with tours held in any designated tour area.
 - (k) If any special occasion licensed events are occurring at the winery, the inspector will review the terms of the licence and observe whether the special event is being conducted in accordance with those terms.

4. Conducting inspections of licensee retail stores

- (a) Before entering the establishment, the inspector will observe:
- advertising or signs on the outside of the establishment
 - activities occurring outside the establishment, e.g., bootlegging for minors, and
 - whether intoxicated persons are leaving the establishment.
- (b) The inspector will enter the establishment and note the time.
- (c) If appropriate, the inspector will advise the licensee of the inspection.
- (d) If appropriate, the inspector will question the licensee on any previous concerns and what follow-up action has been taken.
- (e) The inspector will observe and note the following:
- types of items for sale
 - separation between the licensee retail store and any adjacent liquor-primary establishment
 - any indication that product is being transferred from the licensee retail store to an adjacent liquor-primary establishment
 - presence of games or entertainment
 - hours of operation
 - the presence of minors
 - whether staff are consistently requesting two pieces of identification when verifying that a patron is not a minor before selling them liquor
 - the presence of intoxicated persons
 - signs and advertising within the establishment
 - any promotions or contests, and
 - the conduct of any consumer tastings.

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5. Recording inspections

- (a) The inspector will record the:
- licensee name
 - travel time, and
 - time in and time out

for each inspection in the inspector's notebook. The inspector will include in the travel time for the first inspection entry the time taken for the inspector to arrive at the establishment from the field inspector or their residence. The inspector will include in the last inspection entry the time taken for the inspector to return to the field office or their residence.

- (b) In the inspector's notebook the inspector will describe any conversations with the licensee, areas of potential concern or follow-up required.
- (c) The inspector will record any liquor or food purchases made during an inspection in the inspector's notebook. The inspector will record the amount of liquor consumed during the inspection, if any. The inspector will retain the receipts for evidentiary purposes.
- (d) The inspector will enter the information recorded in the inspector's notebook for each inspection on Ranger or POSSE.

6.3 24 Hour Suspensions

Policy Rationale

In the interests of public safety, the general manager has the power under section 22 of the Act to take immediate action and temporarily close an establishment where patron or employee conduct is riotous,

violent, drunken or disorderly. The general manager has delegated this power to liquor inspectors, regional managers and the DGM Compliance. The decision to temporarily close a licensed establishment pursuant to this power is a serious one and will only be taken if the local police are in attendance to ensure the safety of patrons, employees and adjacent residents and businesses.

Policy

6.3.1 Authority to impose a 24 hour suspension

A liquor inspector, peace officer, or other person delegated by the general manager may suspend the licence and order the immediate removal of patrons and closure of premises in which:

- patrons or employees are engaging in riotous, violent, drunken or disorderly conduct, or
- the safety of one or more persons at the licensed establishment is threatened.

The suspension and closure of the premises may take effect without a hearing and may be for a period of not more than 24 hours.

[Liquor Control and Licensing Act, section 22(1)]

6.3.2 Licensee responsibility to vacate establishment

If a licensed establishment is required to be vacated under a 24 hour suspension, the licensee must take all reasonable steps to ensure that the licensed establishment is immediately vacated.

[Liquor Control and Licensing Act, section 22(4)]

6.3.3 Factors to consider before imposing a 24 hour suspension

In determining whether to suspend the licence and order the removal of patrons, the inspector will consider the following factors:

- the number of patrons or employees engaged in the riotous, violent, drunken or disorderly conduct
- the risk of immediate harm to members of the public due to the patron or employee conduct, including members of the public within the licensed establishment and adjacent residents or businesses
- the risk of immediate harm to employees due to the patron or employee conduct
- the actions and ability of the licensee and employees to regain management of conduct in the establishment
- the availability of police support, and
- whether the safety of patrons and employees can be assured without ordering a suspension of the licence and evacuation of the premises.

[Liquor Control and Licensing Branch Policy]

6.3.4 Police presence before imposing a 24 hour suspension

An inspector will not take action pursuant to section 22 of the Act unless the police are in attendance at the licensed establishment.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 22; Liquor Control and Licensing Branch Policy

Procedures

1. The inspector will consider the factors outlined in policy 6.3.3 above and determine whether or not to suspend the licence and order the immediate removal of patrons and closure of the licensed establishment.
2. If the inspector decides it is necessary to suspend the licence and order the immediate removal of patrons, the inspector will contact the local police and ask for their attendance at the licensed establishment. The inspector will not take any further action to suspend the licence until the police are in attendance.
3. If the inspector believes the establishment may be overcrowded, the inspector will arrange for a police inspector or compliance and enforcement inspector to be in attendance at all exits and to count the number of patrons as they exit.
4. The inspector will determine the period for which the licence should be suspended, to a maximum of 24 hours.
5. The inspector will inform the licensee or manager on duty:
 - that the licence is being suspended under the authority of section 22 of the Act
 - the time period for the suspension, and
 - that the premises must be vacated.
6. The inspector will collect evidence in accordance with the policies and procedures outlined in this manual for the specific contravention(s) identified. Generally, the inspector will interview the licensee and obtain liquor sales receipts before leaving the establishment.
7. The inspector will fully describe in the inspector's notebook:
 - the factors which led the inspector to determine that a suspension of the licence was required
 - the terms and length of the suspension
 - the comments and actions of the licensee when informed of the suspension, and
 - the identity of the police inspectors in attendance.
8. The inspector will ask that the police inspectors forward a copy of their notes and / or the relevant general occurrence report to the inspector.
9. As soon as possible after the event, the inspector will inform the regional manager of the suspension.

6.4 Compliance Meetings

Policy Rationale

The purpose of a compliance meeting is to assist the licensee and staff in anticipating, and creating solutions for, potential compliance problems. Sessions with licensees and their staff that are only educational in nature are addressed under 5.3 Stakeholder Liaison Sessions.

Compliance meetings are an important part of the Compliance and Enforcement Program. They are not, however, a required step prior to taking enforcement action. Both at the time of licensing and on an ongoing basis through various communications activities, the licensee is provided with enough information to know and understand their responsibilities as the holder of a liquor licence.

Policy

6.4.1 Convening a compliance meeting

Compliance meetings are held at the discretion of the Liquor Control and Licensing Branch. An inspector may convene a compliance meeting:

- on their own initiative
- at the request of a licensee, or
- at the request of a regional manager, deputy general manager or general manager.

When determining whether to convene a compliance meeting upon a request of the licensee, the inspector may consider:

- the number of previous requests by the licensee
- whether the licensee is a new licensee
- whether the establishment is a new establishment
- whether there has been significant turnover in staff
- whether the licensee has been issued a contravention notice in the previous 12 months, and
- whether the licensee has been subject to enforcement action in the previous 12 months.

[Liquor Control and Licensing Branch Policy]

6.4.2 Attendees at a compliance meeting

In addition to the inspector and the licensee, attendees at the compliance meeting may include any or all of:

- the establishment manager
- key staff from the establishment
- a police officer familiar with the establishment
- the responsible regional manager
- another inspector familiar with or involved with an inspection of the establishment
- a local government representative, and / or
- a fire department representative.

[Liquor Control and Licensing Branch Policy]

6.4.3 Compliance meeting not a requirement before taking enforcement action

The compliance meeting is not a part of the enforcement process and is not a requirement either after issuing a contravention notice or prior to recommending enforcement action.

[Liquor Control and Licensing Branch Policy]

6.4.4 Informing licensees of consequences of further non-compliance

If there has been some evidence of prior non-compliance, the inspector may convey to the licensee during the compliance meeting that any further non-compliance could result in enforcement action.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

Procedures

1. Scheduling and planning for a compliance meeting
 - (a) In consultation with the licensee, the inspector will set the time and place for the meeting.
 - (b) In consultation with the licensee, the inspector will set the agenda for the compliance meeting. In setting the agenda, the inspector may consider:
 - any topic the licensee would like discussed
 - common compliance problems for that class of establishment, and
 - compliance problems identified by the inspector.
 - (c) The inspector will determine whether any participants, other than the licensee and their staff, should be invited to the compliance meeting.
 - (d) The inspector will inform any other participants of the time, date, location and agenda for the compliance meeting.
2. Conducting the compliance meeting

The inspector will conduct the compliance meeting based on the pre-determined agenda.
3. Documenting the compliance meeting
 - (a). The inspector will document the details of the compliance meeting on the compliance meeting form.
 - (b). During the compliance meeting, the inspector will tick those items that have been reviewed and make notes on the form as necessary.
 - (c). If the licensee makes any commitments during the meeting, the inspector will document these commitments on the compliance meeting form.
 - (d). At the close of the compliance meeting, the licensee and the inspector will both sign the compliance meeting form.
4. Recording and distributing the compliance meeting form
 - (a) The inspector will provide the licensee with copy 1 of the form at the close of the meeting.
 - (b) If any other participants in the meeting ask for a copy of the form, the inspector will provide them with a photocopy of the form.
 - (c) The inspector will enter the details from the compliance meeting form on POSSE.
 - (d) The inspector will file copy 2 of the compliance meeting form on the field establishment file.
 - (e) The inspector will mail copy 3 of the form to headquarters for filing on the headquarters establishment file.

6.5 Other Compliance Strategies

Policy Rationale

While inspections, compliance meetings and the enforcement process are typical strategies for identifying and addressing compliance issues, inspectors are encouraged to be creative and use a problem solving methodology to identify and analyze problems and plan and implement strategies to achieve compliance.

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An example of a compliance strategy is information sharing with other agencies. In addition, inspectors should, whenever possible and appropriate, make use of the addition of terms and conditions to licences in order to increase compliance.

Policy

6.5.1 Information sharing with other agencies

Inspectors will work cooperatively with other regulatory agencies to address compliance problems. Inspectors may report instances of non-compliance with other regulatory requirements to the appropriate agency.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

Procedures

1. Information sharing with other agencies

Inspectors will prepare a written report of any instances of non-compliance with other regulatory requirements and forward to the responsible agency.

6.5.2 Using terms and conditions to increase compliance

Under section 12(2)(a) of the *Liquor Control and Licensing Act*, the general manager has the authority to "impose, in the public interest, terms and conditions (a) that vary the terms and conditions to which the licence is subject under the regulations, or (b) that are in addition to those referred to in paragraph (a)". Section 20(2)(b) of the Act gives the general manager the authority to impose, rescind or amend terms and conditions on a licence "with or without a hearing".

There are a number of circumstances where it may be appropriate for an inspector to make use of terms and conditions to achieve voluntary compliance or when an inspector may recommend that terms and conditions be imposed on a licensee as a result of enforcement action. When planning to make use of terms and conditions to achieve compliance, the inspector should involve their regional manager in the process as early as possible. The regional manager must approve terms and conditions recommended as part of enforcement action and needs to be aware of other circumstances where the addition of a term and condition to a licence has been encouraged or required. The following outlines the various situations where inspectors are encouraged to consider how terms and conditions might be used to increase compliance:

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1. Impose term and condition on a new licence

All liquor licences are subject to a general set of terms and conditions but some establishments may be identified as being potentially higher risk, or as having particular characteristics that warrant additional terms and conditions being applied to their licence. Characteristics that might lead to additional terms and conditions being added to a licence might include the physical layout of an establishment, location and type of establishment.

Should the licensing manager decide to add terms and conditions to the licence that are over and above those terms and conditions regularly imposed, licensing staff must inform the applicant as early in the process as possible and given time to respond. Inspectors are strongly encouraged to consider potential terms and conditions during the initial site visit and to engage with licensing analysts in determining if a term and condition should be added to a licence. The term and condition and licensee response must form part of the licence decision.

2. Impose terms and conditions on licence transfer

Terms and conditions imposed as a result of a licence transfer are similar to those that might be imposed on a new licence. Again, specific characteristics or risks associated with an establishment, or concerns with the new licensee may make additional terms and conditions necessary. The history of an establishment will also impact what terms and conditions might be added.

As with a new licence, should the licensing manager decide to add terms and conditions to the licence that are over and above those terms and conditions regularly imposed, licensing staff must inform the applicant as early in the process as possible and given time to respond. Again, the inspector should engage with the licensing manager as soon as possible in the process. The term and condition and licensee response must form part of the licence record.

3. Discuss possibility of adding term and condition during compliance meeting

In some cases an inspector will meet with a licensee to discuss problems associated with their establishment but the inspector is not intending to pursue enforcement action. In such a case the inspector could discuss with a licensee what they might do to avoid non-compliance or problems in the future.

Any discussion on the possibility of adding a term and condition to a licence, or an agreement from the licensee to change how they do business to ensure compliance would form part of the compliance meeting form signed by the licensee and inspector and added to the licence file. The compliance meeting record could be introduced in an enforcement hearing if future related contraventions do result in enforcement action against the licensee.

4. Inspector to recommend the imposition of a term and condition as part of enforcement action

Inspectors could turn their mind to what terms and conditions may prevent problems with a licensee in the future whenever they take enforcement action. Terms and conditions could be recommended in addition to monetary or suspension penalties, where appropriate. **Recommended terms and conditions must correlate with the contravention that has taken place.**

Terms and conditions applied to a licence also have the option of being applied temporarily, contingent on the licensee remaining compliant.

Inspectors must not discuss the removal of existing terms and conditions with a licensee without seeking direction first from the DGM of Compliance and Enforcement through the regional manager.

The following table outlines some suggested terms and conditions that may be effective for addressing some compliance issues. The suggested terms and conditions are not an exhaustive list and inspectors are encouraged to think about the specific situation they are dealing with and how to best address it through the use of terms and conditions.

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Contravention	Suggested Terms and Conditions
Operate contrary to primary purpose.	<ul style="list-style-type: none"> • Removal or adjustment of entertainment endorsement (use if entertainment is shifting the focus away from a food primary to a liquor primary). • Roll back of liquor sales hours (if shift in focus, from a food-primary establishment to a liquor primary establishment, tends to occur at certain time).
Supplying liquor to minors Minor on licenses premises	<ul style="list-style-type: none"> • Mandatory door staff at prescribed times. • Required to use electronic scanning equipment for ID verification. • Require video surveillance at all ID checking areas. • Video surveillance and electronic scanning systems must be capable of retaining one week's worth of data and must be capable of producing video records if needed or demanded by police or inspector. • No patrons permitted to enter the establishment in the event that the electronic scanning equipment and/or video surveillance are not working. • Require LRS's to post signage both in and out of the store stating the applicable laws pertaining to minors in a licensed establishment, minors in possession of liquor and adults supplying liquor to minors. • Require LRS to discourage adults from making purchases on behalf of minors who may loiter by installing video surveillance in prescribed areas.
Selling liquor to an intoxicated person Permit person to become intoxicated Permit intoxicated person to remain	<ul style="list-style-type: none"> • Roll back of hours if a demonstrated link exists between the hours of operation and contraventions or concerns related to intoxication. • Restrict service to single size containers (a drink containing distilled liquor may not contain more than 3 fluid ounces of distilled liquor, a single serving of wine is no more than 0.25 litres and a single serving of beer is no more than 0.5 litres).
Weapons	<ul style="list-style-type: none"> • Require licensee to install, maintain and use an industry standard and operational electronic weapons detection system. In the event that the weapons detection system is not working, the licensee must refuse to admit patrons into the establishment until the equipment is repaired or suitable backup equipment is in place and is operational. • All patrons of an establishment must be screened for weapons upon entry or re-entry into an establishment. • Maintain minimum door staff levels as prescribed by the inspector. • Mandatory searches of all bags, purses, backpacks, fanny packs or other carrying bags. • Licensee will ensure that the following articles are not allowed to be worn by any patron or employee to the establishment: (a) any clothing or jewellery with gang or gang affiliated identification including jackets, hats, vests, t-shirts, rings, bracelets, necklaces or belts and (b) any person who removes a garment inside the club revealing any of the above items or gang support wear will be required to leave immediately. • The licensee must hire and maintain a minimum number of licensed private security staff to conduct all screening and security required. Private security staff must be briefed in detail on what their duties entail. Private security staff must conduct all screening and security during all hours that the licensed establishment is in operation.
Failure to take reasonable measures to prevent community disturbance.	<ul style="list-style-type: none"> • Licensee must make modifications to reduce sound emissions from establishment. • Closure of all doors and windows at prescribed times. • Increase level of outdoor lighting to discourage illegal activity in and around establishment. • Licensee to install signage in establishment requesting patrons reduce noise upon exiting.

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	<ul style="list-style-type: none"> • Licensee to have a dispersal plan in effect and adequate staff available to clear the area of lingering patrons upon closing. • Roll back of hours if disturbances are repeatedly at certain times. • Installation of video surveillance for outdoor areas. • Take measures to prevent line-up noise.
Overcrowding	<ul style="list-style-type: none"> • Require licensee to have door staff on duty at prescribed times. • Require licensee to do counts at prescribed times; record counts and submit to inspector on a prescribed basis. • Require licensee to designate a staff person to be responsible for conducting counts.
Fail to clear patrons Fail to remove alcohol Allow to consume after ½ hour Liquor removed from establishment Sales strategies to promote intoxication	<ul style="list-style-type: none"> • Licensee to install appropriate signage on service hours and removal of alcohol from premises. • Require mandatory door staff to prevent alcohol removal from premises.
Prohibited entertainment	<ul style="list-style-type: none"> • Require licensee to install surveillance cameras in all VIP booths.

SECTION 7: GATHERING EVIDENCE

7.0 Introduction

Evidence is testimony, writing, material objects or other things that are offered to prove the existence or non-existence of a fact. Inspectors may gather different types of evidence relating to contraventions, including:

- the inspector's own observations
- information from third parties, such as police or other regulatory agencies
- liquor and liquor samples
- liquor purchase records and other documents
- security videos and other things, and
- statements of witnesses.

Sections 10 through 28 of this manual outline the types of evidence that may be relevant to particular contraventions. This section outlines general policies and procedures for gathering and handling various types of evidence and is organized under the following headings:

- Recording Observations
- Complaints from Other Agencies and the Public
- Seizing Liquor and Taking Samples
- Obtaining Documents, Records and Things
- Interviewing Licensees, Staff and Witnesses, and
- Maintaining Continuity of Evidence.

7.1 Recording Observations

Policy Rationale

Inspectors may gather and receive considerable amounts of information during the course of an investigation. If observations are not recorded, they may be forgotten. An inspector's observations recorded in notes, photographs or sketches may be referred to when preparing reports and during enforcement hearings. Unrecorded observations do not become part of the establishment file. In the event that an inspector is unavailable or no longer working for the branch, essential information may be lost.

Policy

7.1.1 Documenting and recording observations

Subject to policy 7.1.2. below, an inspector's observations regarding an alleged contravention will be documented or recorded either in the branch issued inspector's notebook or through the use of sketches or photographs. Observations will be recorded at the time an alleged contravention is identified or as soon afterwards as is practical.

[Liquor Control and Licensing Branch Policy]

7.1.2 Use of notebooks during inspections

If an inspector is attempting to observe the operation of an establishment undetected, the inspector may choose not to record observations in the inspector's notebook. Inspectors may make notes on napkins or small pieces of paper, as appropriate. As soon as practical, the inspector will transcribe any notes into the inspector's notebook and indicate that the notes were transcribed.

[Liquor Control and Licensing Branch Policy]

7.1.3 Photographs

Where appropriate, inspectors may take photographs as evidence of an alleged contravention. Inspectors should avoid including extraneous items that are not relevant to the alleged contravention. Inspectors will record details of photographs, such as the time, date, location, lighting and the contents of each photo, in their notebooks.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

Procedures

1. An inspector will use only one notebook at a time. Inspectors will file completed notebooks as branch records.
2. Inspectors will clearly record all observations relating to a contravention in their notebooks, including:
 - time, date, day of the week
 - licence name and number
 - the nature and details of the contravention
 - complete and correct names, addresses and telephone numbers of staff and witnesses
 - details of any evidence found, including who found it, where it was found, how it was marked and how it was disposed of
 - sketches or diagrams, if required
 - details of any conversations with the licensee, staff or witnesses
 - details of any photographs taken, and
 - the number of any contravention notice issued.

7.2 Complaints from Other Agencies and the Public

Policy Rationale

Inspectors are not able to constantly monitor the operation of each licensed establishment. Complaints of alleged contraventions from police, other agencies and the public are a useful source of evidence and information for inspectors. The branch documents and reviews all complaints in order to track the numbers and types of complaints received against an establishment. While the branch reviews and assesses each complaint it receives, policies and procedures differ depending upon the source of the complaint.

When police attend at an establishment, they will look for evidence of a contravention. Police generally record evidence of contraventions on a licensed premises check (LPC) and give a copy of the LPC to the licensee at the time they identify an alleged contravention. However, police may also record evidence of contraventions in general occurrence reports or in their notes.

The branch may also receive complaints about licensed establishments from local government and other regulatory agencies. As a result of their own audit, inspection or complaint gathering functions, these agencies may obtain evidence of possible compliance problems within an establishment. The branch relies on complaints from these agencies as key sources of information regarding the operation of licensed establishments.

The policies and procedures for response to complaints from police and other agencies varies somewhat from the branch response to complaints received from members of the public or other licensees. In recognition of the fact that they may have a professional interest in the operation of the establishment in question, the branch keeps police and other agencies informed of follow-up activities or enforcement action resulting from their complaints.

Policy

7.2.1 Directing complaints to the appropriate inspector

All verbal complainants will be directed to contact the inspector responsible for the subject establishment in order to make their complaint. All written complaints will be directed to the appropriate inspector.

[Liquor Control and Licensing Branch Policy]

7.2.2 Keeping police and other agencies informed of the result of a complaint

Inspectors will inform police and other agencies of the follow-up they take as a result of a complaint. An inspector does not need to inform members of the public or other licensees of follow-up action taken as a result of a complaint. Compliance and enforcement headquarters will ensure that the police or other agency is kept informed of enforcement action taken as a result of their complaint, in accordance with the procedures outlined in 9.7 Imposing Penalties.

[Liquor Control and Licensing Branch Policy]

7.2.3 Recording complaints on POSSE

All complaints will be recorded on POSSE, other than those complaints received during an inspection.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

Procedures

1. Recording complaints and follow-up action
 - (a) The inspector will record the details of the LPC or complaint on POSSE.
 - (b) The inspector will record the follow-up taken as a result of a complaint or LPC on POSSE. If the inspector determined that follow-up action was not warranted, the inspector will indicate the reasons why no follow-up action was taken as a result of the complaint.
 - (c) If required in accordance with policy 7.2.2 above, the inspector will contact the police officer or complainant by telephone or letter to let the complainant know what action the branch took as a result of the complaint.

2. Filing LPC's

- (a) The inspector will file copy 2 of the LPC on the field establishment file.
- (b) The inspector will forward copy 3 of the LPC to headquarters, along with a copy of any follow-up notes to file. If the inspector issued a contravention notice as a result of the LPC, the inspector will attach copy 3 of the LPC to the copy of the contravention notice sent to headquarters.
- (c) Headquarters will file a copy of the LPC and any notes to file on the headquarters establishment file.

3. Filing other complaints

- (a) The inspector will file a copy of any written complaint on the field establishment file.
- (b) The inspector will send one copy of any written complaint to headquarters for filing on the headquarters establishment file.

7.3 Seizing Liquor and Taking Samples

Policy Rationale

Particularly where the contravention relates to illicit liquor, seized liquor and / or liquor samples may be vital pieces of evidence required to establish a contravention. Seizing liquor and taking samples are separate and distinct activities. To ensure that samples or seized liquor are properly obtained and admissible as evidence at an enforcement hearing or other proceeding, it is important for inspectors to ensure they have the proper authority under the Act to either seize liquor or take samples.

Policy

7.3.1 Authority to seize liquor

In order to seize liquor, an inspector must have reasonable and probable cause for believing the liquor is being held contrary to the Act or the regulation. If an inspector finds liquor in circumstances that satisfy the inspector that it is being possessed or kept contrary to the Act or the regulation, the inspector may immediately seize and remove the liquor and packages containing it.

[Liquor Control and Licensing Act, section 70(1)]

7.3.2 Authority for taking samples of liquor

To obtain information respecting the administration or enforcement of the Act or regulation, an inspector may take reasonable samples of liquor for testing and analysis. A reasonable sample is:

- one three ounce or 100 ml sample of each brand being sampled, or
- an entire bottle of a beer or wine product sold by the bottle.

Inspectors may take more than one sample of a product if they consider it appropriate to do so, e.g., one from a storage area and one from the bar area.

[Liquor Control and Licensing Act, section 73(1.1), Liquor Control and Licensing Branch Policy]

7.3.3 Seizures and samples restricted to licensed establishments

Inspectors may only seize liquor or take samples from licensed establishments or liquor storage areas associated with a licensed establishment.

[Liquor Control and Licensing Act, section 73(1)(b)]

Authority References

Liquor Control and Licensing Act, sections 70(1) and 73; Liquor Control and Licensing Branch Policy

Procedures

1. Seizing liquor

- (a) The inspector will mark the liquor with the date and time of seizure and the inspector's initials.
- (b) The inspector will record on an exhibit label the complete brand name of the liquor product and the CSPC number (if one is recorded on the container) as well as the volume and type (e.g., glass, plastic) of the container. If there is no product identification on the bottle or container, the inspector will ask the licensee what the product is and record the response. If an exhibit label is not available, the inspector will record this information in the inspector's notebook.
- (c) If labels are available, the inspector will place an exhibit label on the body of each container of liquor seized and a neck label over the top of the bottle.
- (d) The inspector will record in the inspector's notebook:
 - the observations or events that led to the seizure
 - a description of the liquor seized
 - the numbers recorded on any neck labels
 - names of any witnesses to the seizure
 - the locations from which the liquor was seized, and
 - the date and time of the seizure.
- (f) If available, the inspector will complete an exhibit receipt describing the liquor and all other items seized.
- (g) The inspector will provide a copy of the receipt to the licensee and ask the licensee to sign the receipt. If the inspector does not have a receipt available, the inspector will ask the licensee to sign the inspector's notebook, or the contravention notice if one was issued, to acknowledge that the liquor was seized.
- (h) If the licensee refuses to sign, the inspector will indicate "refused to sign" on the receipt signature line or in their notebook.
- (i) The inspector will advise the licensee that a claim may be made for return of the liquor under section 70 of the Act within 30 days from the date of the seizure.
- (j) The inspector will maintain continuity and safeguard the seized liquor in accordance with the procedures outlined in 7.6 Maintaining Continuity of Evidence and Exhibits.

2. Taking samples

- (a) The inspector will use only sterile branch-issued sample containers and ensure that samples do not become contaminated.
- (b) The inspector will use one container for each sample. The inspector will use the appropriate type of container for the type of liquor being sampled:
 - spirits – glass containers
 - wine or beer in bottles – entire bottle is used as the sample
 - wine or beer from an opened container – glass containers with teflon caps, and
 - fermenting juice – plastic bottles and salicylic acid powder. Salicylic acid stops fermentation, allowing the alcohol content of a sample to be determined.
- (c) The inspector will use pipettes to transfer samples into containers. The inspector will use a new pipette for each sample taken.

- (d) If the sample is being taken from a liquor dispensing machine, the inspector will take the sample from the feed bottle or reservoir in the manifold of the dispenser. The dispenser or lines may be contaminated with other liquor. Before taking a sample from a pressurized canister, the inspector will ask the licensee to depressurize the canister.
 - (e) The inspector will fill sample bottles approximately $\frac{3}{4}$ full in order to prevent leaks from expansion of the liquid due to heat, pressure or humidity change.
 - (f) If the inspector believes that there may have been contamination of the liquor sample during the sampling process, the inspector will:
 - place the pipette in an envelope
 - seal the envelope
 - label the envelope to correspond to the liquor sample, and
 - include the pipette in the package with the samples sent for analysis.
 - (g) The inspector will reserve one unused glass container from each batch of bottles used for samples and include it with the samples sent for analysis.
3. Marking samples
- (a) The inspector will place a neck label over the cap and seal the sample container.
 - (b) The inspector will complete and affix a seizure label for each container including the brand name of the liquor product and the CSPC number (if one is recorded on the bottle or container from which the sample was taken). If there is no product identification on the bottle or container, the inspector will ask the licensee what the product is and record the response.
4. Recording details of the sampling
- (a) If the samples were taken from a liquor dispensing machine, the inspector will record:
 - the level of fluid in the canister
 - the condition of the roof in the area where the canister is located, i.e., any evidence of water damage or leaking, and
 - security measures in place in the area where the canister is located, e.g., whether the area is locked, how many people have access to the area.
 - (b) The inspector will make comprehensive notes in the inspector's notebook recording all the circumstances pertaining to the sampling, including:
 - observations or events that led the inspector to take the sample
 - the names of any witnesses to the events and the sampling
 - the locations from which samples were taken
 - the date and time of the sampling
 - the number recorded on each neck label, and
 - a physical description of the samples taken.

5. Submitting liquor samples for analysis

- (a) The inspector will prepare a letter to the lab analyst requesting analysis. The letter will include the following information:
- the name, location and address of the establishment from which the liquor was seized or samples taken
 - the date the seizures were made or samples taken
 - the name of the suspect product, if it is known
 - the name, address, phone number, fax number and email address of the inspector
 - all available background information pertaining to the seizure or sampling that might assist the analyst, including the specific products to which the samples should be compared
 - the type of analysis required, for example:
 - identification of substance
 - determination of origin
 - whether the product has been diluted or adulterated, or
 - determination of the alcohol content, and
 - the date by which the inspector requires the analysis report.
- (b) The inspector will seal each container in a plastic bag. The inspector will then wrap each container individually in shock absorbent material to minimize the chance of breakage.
- (c) The inspector will pack the containers into a box issued by the branch specifically for the purpose of shipping liquor for testing and analysis. The inspector will ensure that each container is held securely in an upright position by inner packing material. The weight of the packed box must not exceed ten kilograms. The inspector will only include samples in containers from the same batch in one box. The inspector will include one unused sample container from that batch in the box.
- (d) The inspector will affix a label to the box indicating the top of the box and that the box contains glass.
- (e) The inspector will seal the box with tape and initial the seal. The inspector will place the letter requesting analysis in an envelope and tape it to the box.
- (f) The inspector will clearly label the box "TEST SAMPLES" and "TO BE OPENED ONLY BY LSSD ANALYST" and address the package to:
- Canada Revenue Agency
Laboratory and Scientific Service Directorate
79 Bentley Avenue
Ottawa, Ontario
K2E 6T7
- (g) The inspector will telephone LSSD at (613) 954-8235 to alert them to the shipment. If the analysis is required for a hearing that has already been scheduled, the inspector will request that the results be faxed directly to the inspector.
- (h) The inspector will ship the box to LSSD via courier. To maintain continuity of the evidence, the inspector will hand the box directly to the courier.
- (i) Once received, the inspector will safeguard and maintain the continuity of the Certificate of Analysis in accordance with the procedures outlined in 7.6 Maintaining Continuity of Evidence and Exhibits. The inspector can photocopy the certificate and use that document for the case file.

6. Disposing of liquor

- (a) The inspector will secure all seized liquor and samples until the enforcement processes and charges, if any, have been completed and any appeals exhausted.
- (b) Upon the direction of the regional manager, the inspector will dispose of the liquor by:
 - returning the liquor to the licensee
 - depositing the liquor at a recycling facility, or
 - pouring the liquor down the drain.
- (c) The inspector will document the disposition on the rear portion of the exhibit receipt. Two individuals will confirm the disposition by initialling the receipt.

7.4 Obtaining Documents, Records and Things

Policy Rationale

To determine whether a licensee is in compliance with the Act, regulations and terms and conditions of its licence, the branch may access documents, records and things pertaining to the operation of an establishment, such as sales records, agreements with manufacturers, equipment receipts or security videos. Inspectors may also wish to examine documents, records and things in the possession of third parties that may provide evidence of a contravention. These may include coroner's reports, police reports, Liquor Distribution Branch records or reports from local government.

The policies and procedures outlined in this section ensure that documents, records and things are properly acquired and handled so as to be admissible as evidence at an enforcement hearing or court proceeding. A licensee's failure to produce a requested document or allow access to records and things is a contravention. Policies and procedures for identifying this contravention are outlined in 20.1 Failing to Produce a Document, Record, Thing or Sample.

7.4.1 Documents that the general manager may request

The general manager may ask a licensee to provide any of the following documents relating to the operation of its business:

- liquor purchase records
- liquor sales records
- liquor disposal records
- food sales records
- sales records respecting other merchandise or services provided by the licensee that are incidental to the business of the licensed establishment
- agreements and contracts between the licensee and a liquor manufacturer or its agent or representative
- invoices and purchase receipts for all equipment and other inventory used in the operation of the licensed establishment
- lease and management contracts related to the licensed establishment
- employee records including names, addresses, salaries, primary job responsibilities, shift schedules and dates of employment
- records of any incidents or events that occurred in or adjacent to the licensed establishment
- records of court orders and judgments against a licensee respecting the sale, service or manufacture of liquor, and
- records of the quantity and price of liquor servings.

[Liquor Control and Licensing Act, section 73(1)(a); Liquor Control and Licensing Regulation, section 34]

7.4.2 UBrew and UVin Documents

In addition to the records listed in policy 7.4.1 above, the general manager may request the following documents from a UBrew or UVin licensee:

- purchase records for all of the ingredients used to produce beer, wine or cider in the UBrew or UVin indicating the source and volume of the ingredients
- copies of customer invoices
- records of the type and quantity of beer, wine or cider produced or manufactured by the licensee and employees, and
- records detailing disposal of any beer, wine or cider that is spoiled, spilled, unclaimed or returned to the licensee.

[Liquor Control and Licensing Regulation, section 31(1)]

7.4.3 Winery documents

In addition to the records listed in policy 7.4.1 above, a winery licensee must make the following records available for inspection:

- records of tonnage of grapes or fruit harvested
- purchase records for grapes or fruit
- purchase records for juice or concentrate
- purchase records for bulk and bottled wine purchased
- purchase records for additives to wine
- production records
- records of the movement and disposition of bulk and bottled wine, and
- records of spillage, sampling and tasting.

[Liquor Control and Licensing Regulation, section 17(2)]

7.4.4 Production of certificate of completion of training program

A person who claims to have successfully completed a training program must produce his or her certificate of completion when requested to do so by the general manager, an inspector or a peace officer.

[Liquor Control and Licensing Regulation, section 43(9)]

7.4.5 Inspection of records, liquor and things

An inspector may inspect:

- records in the possession of any person relating to the shipment or carriage of goods, and
- all records, liquor and other things associated with the operation of a licensed establishment.

[Liquor Control and Licensing Act, section 73(1)(b)]

7.4.6 Authority to request documents, records and things from third parties

The general manager may summon a person to produce all documents, writings, books, deeds and papers in the person's possession, custody or power relating to the subject matter of an enforcement hearing. Inspectors may request documents, records and things from third parties, but have no authority to order their production.

[Liquor Control and Licensing Act, section 20(4.1)(b)]

7.4.7 Retaining documents, records or things to make copies or extracts

An inspector may:

- retain documents produced by a licensee, or
- remove relevant records and things

for the purpose of making copies or extracts. The inspector must:

- give a receipt for the documents, records or things, and
- return the documents, records or things within a reasonable time.

[Liquor Control and Licensing Act, sections 73(1.1) and (1.2)]

7.4.8 Certified copies

A copy or extract certified by the inspector as a true copy or extract from the original is admissible in evidence the same as the original record.

[Liquor Control and Licensing Act, section 73(1.3)]

Authority References

Liquor Control and Licensing Act, sections 20(4.1)(b) and 73; Liquor Control and Licensing Regulation, sections 17(2), 31(1), 34 and 43(9).

Procedures

1. Requesting documents, records and things

(a) If an inspector concludes that:

- a prescribed document, or
- a record or thing associated with the operation of the establishment
- should be produced or inspected, the inspector will ask the licensee to produce the item.

(b) If the licensee does not produce the item in response to a verbal request, the inspector will make a written request for the item. A written request will include:

- a date of production that is within 7 to 10 days from the date of the request or a reasonable time given the nature of the item
- a description of the item. The description may be general if the inspector does not have sufficient information to specifically identify the item, and
- the consequences of a failure to comply with the request.

(c) The inspector will deliver all written requests, either personally or by registered mail, to the licensee's office of record and the establishment.

2. Making copies or extracts of documents, records or things

- ###### **(a) Upon production of the requested item, the inspector will confirm with the licensee whether the item needs to be returned. If the licensee needs the documents, records or things returned, the inspector will make copies or extracts and return the items to the licensee in accordance with procedures (d) and (e) below. If the licensee does not need the documents, records or things returned, the inspector may retain the items.**

- (b) The inspector will prepare an exhibit receipt listing and describing the items that were removed or retained. The inspector will ask the licensee to sign the receipt. The inspector will give a copy of the receipt to the licensee. If an exhibit receipt is not available, the inspector will list the items removed on the contravention notice or in the inspector's notebook and ask the licensee to sign the notice or the notebook to acknowledge that the items were removed.
- (c) The inspector will make notes of all the circumstances pertaining to the removal, such as:
 - the events leading to the removal
 - names of witnesses
 - location of items, and
 - time the items were removed.
- (d) If the licensee needs the items returned, as soon as practical, the inspector will make copies of all items removed and certify each copy as a certified true copy by comparing the copy to the original, applying a stamp to the face of the copy and signing and dating the stamp.
- (e) The inspector will take a copy of the exhibit receipt or their notes when returning the items and have the person who receives the returned items acknowledge that each item has been returned. The inspector will note the name of the person who received the items and their acknowledgment that all items were returned in the inspector's notebook. The inspector will ask the person to initial and date the copy of the exhibit receipt or notes to signify their acknowledgment.

7.5 Interviewing Licensees, Staff and Witnesses

Policy Rationale

To obtain information about an alleged contravention, inspectors may interview licensees, their staff or other persons with relevant information, either at the time an alleged contravention occurs or during an investigation. Interviews may range from formal sessions with a prepared list of questions, to follow-up phone calls with a licensee regarding a complaint.

Policy

7.5.1 Authority to conduct interviews

Inspectors may question persons who may have relevant information regarding an alleged contravention, but cannot compel a person to answer. Where a person is reluctant to answer questions, the inspector may tell the person that the general manager can issue a summons and require a person to answer questions under oath at an enforcement hearing. Inspectors do not have authority to administer oaths or to take affidavits.

[Liquor Control and Licensing Act, section 20(4.2); Liquor Control and Licensing Branch Policy]

7.5.2 Interviewing techniques

Inspectors will adopt appropriate interview techniques to ensure that necessary information is obtained while at the same time ensuring a fair and respectful interview climate.

[Liquor Control and Licensing Branch Policy]

7.5.3 Recording interviews

Inspectors will record the results of personal interviews in their notebooks. Inspectors will not electronically record interviews without the consent of all parties to the interview.

[Liquor Control and Licensing Branch Policy]

7.5.4 Interviewing persons under the age of 18

Before interviewing a person under the age of 18, the inspector will inform the person that:

- the information the person provides may be used as evidence in an enforcement hearing
- the person is under no obligation to answer questions
- the person may be summoned to present evidence at an enforcement hearing, and
- the person may have a parent or guardian present during the interview.

The inspector will document this discussion with the young person in the inspector's notebook.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 20(4.2); Liquor Control and Licensing Branch Policy

Procedures

1. Inspectors will interview witnesses individually. Inspectors may ask witnesses not to discuss the incident with each other while waiting to be interviewed.
2. When appropriate, inspectors will prepare a list of questions in advance of the interview.
3. Inspectors will identify witnesses by obtaining the witness' name, address and telephone number.
4. Whenever possible, inspectors will use open ended and direct questions. Inspectors will avoid using leading or suggestive questions when interviewing witnesses.
5. Inspectors will record the questions and the witness' responses in their notebooks.

7.6 Maintaining Continuity of Evidence and Exhibits

Policy Rationale

Continuity of evidence refers to the ability of the inspector to ensure that physical evidence has been continually secured and maintained throughout the enforcement process, from seizure of the evidence until it is produced in an enforcement hearing. The inspector must be able to demonstrate that the evidence presented at an enforcement hearing is the same evidence which was seized and that it has not been tampered with or compromised. Continuity of evidence is also important as evidence seized by the branch may be used subsequently by another agency, such as the RCMP or the Canada Revenue Agency, for charges under federal statutes.

Policy

7.6.1 Safeguarding evidence

All evidence that comes into the possession of the branch will be safeguarded against loss, theft or damage.

[Liquor Control and Licensing Branch Policy]

7.6.2 Maintaining continuity of evidence

Inspectors will maintain continuity of evidence that comes into their possession by:

- keeping strict and controlled possession of the evidence until it is securely stored, and
- limiting the number of people who handle or have access to the evidence.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

Procedures

1. Immediately upon seizing a piece of evidence, the inspector will mark the evidence with:
 - the date of seizure
 - the time of seizure, and
 - the inspector's initials.
2. The inspector will complete an exhibit receipt for all seized evidence, ask the licensee to sign the receipt and give a copy of the receipt to the licensee. Where an exhibit receipt is unavailable, the inspector may list the seized items in the inspector's notebook, or on the contravention notice if one is issued, and ask the licensee to initial the notebook or the contravention notice.
3. The inspector will maintain control of the seized evidence while transporting it to the field office.
4. The inspector will record the following information in the field office exhibit ledger:
 - time seized
 - from whom the evidence was seized
 - detailed description of the evidence, and
 - the location where the evidence was deposited.
5. The inspector will assign the corresponding exhibit number from the exhibit ledger to the evidence and include the exhibit number on the seizure label and exhibit receipt.
6. The inspector will place the original exhibit receipt in the exhibit ledger.
7. The inspector will secure the evidence in a designated branch evidence storage facility along with one copy of the exhibit receipt.
8. If evidence leaves the inspector's possession, the inspector will record on the back of the exhibit receipt the following:
 - to whom the evidence was given and why
 - the time and date it was given to that person, and
 - the time and date it was returned and by whom.

SECTION 8: IDENTIFYING A CONTRAVENTION

8.0 Introduction

After gathering evidence of an alleged contravention, an inspector must decide whether a contravention, in fact, occurred. This decision is made after analysing the nature, quality and sufficiency of the evidence to determine whether each of the elements necessary to establish that particular contravention can be proven. The evidence gathering and analysis processes are often combined, as only by analysing the evidence obtained can an inspector determine whether further evidence is required to prove a contravention.

If an inspector determines that a contravention occurred, the inspector must issue a contravention notice to the licensee. Whether or not a contravention occurred, the inspector may determine that another compliance strategy is appropriate for that licensee in order to avoid future compliance problems.

This section outlines the policies and procedures for identifying contraventions organized under the following headings:

- Determining Whether a Contravention Occurred
- Issuing a Contravention Notice, and
- Correcting a Contravention Notice.

8.1 Determining Whether a Contravention Occurred

Policy Rationale

Once an inspector has gathered evidence of an alleged contravention, the inspector must analyse the evidence to determine whether a contravention occurred. A thorough analysis of the evidence and the elements of the contravention at this stage ensures that contravention notices are not issued without sufficient evidence and assists with the preparation of reports and the branch case if the matter proceeds to an enforcement hearing.

Policy

8.1.1 Determining whether a contravention occurred

To form the opinion that a contravention occurred and issue a contravention notice, an inspector will consider whether enough evidence exists to prove each element of the contravention on a balance of probabilities. "Balance of probabilities" is defined in 4.3 Definitions.

[Liquor Control and Licensing Regulation, section 64(1); Liquor Control and Licensing Branch Policy]

8.1.2 Considering the use of additional compliance strategies

When analysing the evidence of an alleged contravention, the inspector will consider whether any of the compliance strategies outlined in Section 6 Compliance Strategies may be appropriate to bring the licensee into voluntary compliance.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 64(1); Liquor Control and Licensing Branch Policy

Procedures

1. The inspector will review the elements of the alleged contravention. Elements of the contraventions identified in Schedule 4 to the regulation are outlined in Sections 10 to 28 of this manual.

2. The inspector will determine whether enough evidence exists to prove each element of the contravention.
3. If the evidence proves each element of the contravention, the inspector will issue a contravention notice in accordance with 8.2 Issuing a Contravention Notice.
4. Whether or not the inspector determines that a contravention occurred, the inspector will consider whether additional compliance strategies are appropriate for the licensee.

8.2 Issuing a Contravention Notice

Policy Rationale

One of the mechanisms used by the branch to promote voluntary compliance is to immediately inform the licensee when a contravention appears to be occurring. This is done with the contravention notice.

The use of a contravention notice ensures that licensees are immediately notified when they are contravening the Act, regulation or a term and condition of their licence so that they may bring themselves back into compliance. If, upon review of the contravention notice, the branch determines that it will proceed with enforcement action, the contravention notice and the supporting evidence provide the basis for the notice of enforcement action. If, upon review of the contravention notice, the branch determines that it will not proceed with enforcement action, the contravention notice remains on the file and provides important file information.

Policy

8.2.1 Providing written notice of a contravention

If an inspector forms the opinion that a licensee has committed a contravention, the inspector must provide written notice to the licensee that the inspector is of the opinion that the licensee has committed a specified contravention.

[Liquor Control and Licensing Regulation, section 64(1)]

8.2.2 Issuing a contravention notice

Generally, an inspector will issue a contravention notice at the time the contravention is identified and leave a copy of the contravention notice at the establishment at that time. However, if the inspector concludes that leaving a copy of the contravention notice at the establishment at the time they identified the alleged contravention could:

- jeopardize their personal safety, or
- impact the inspector's ability to conduct an inspection undetected
- the inspector will deliver the contravention notice at a later time.

[Liquor Control and Licensing Branch Policy]

8.2.3 Types of contravention notices

The inspector will issue a UBrew / UVin contravention notice if the establishment is a UBrew or UVin. The inspector will issue a standard contravention notice for all other types of licensed establishments.

[Liquor Control and Licensing Branch Policy]

8.2.4 Alleging lesser included contraventions

The inspector will include on a contravention notice all contraventions for which there is enough evidence to form an opinion that the contravention occurred. For example, an inspector may allege all three contraventions of:

- failing to request identification from a person appearing to be under the age of 25
- permitting a minor on licensed premises, and
- supplying liquor to a minor

for one incident involving one minor.

[Liquor Control and Licensing Branch Policy]

8.2.5 Issuing a contravention notice when the licence is in the process of being transferred

The branch may only initiate enforcement action against a licensee. If a new operator is using a licence that is in the process of being transferred, the previous owner continues as the licensee of record until the transfer is completed. If a contravention occurs under the management of a new owner pending a licence transfer, the inspector must issue the contravention notice to the licensee of record.

[Liquor Control and Licensing Act, section 20; Liquor Control and Licensing Regulation, section 64(1)]

8.2.6 Issuing a contravention notice to a manufacturer that also holds an agent's licence

Inspectors will use the following guidelines to name the appropriate licensee and licence number when issuing a contravention notice to a manufacturer who also holds an agent's licence:

- contraventions involving off-site promotions conducted under the authority of an agent's licence must name the agent as licensee, and
- contraventions involving the operation of a sampling area or other on-site activities must name the manufacturer as licensee.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 20; Liquor Control and Licensing Regulation, section 64(1);
Liquor Control and Licensing Branch Policy

Procedures

1. Completing the contravention notice

- (a) The inspector will indicate the date and time that the contravention was identified on the contravention notice.
- (b) The inspector will indicate the sections of the Act and / or regulation that were contravened.
- (c) In the "details" section of the contravention notice, the inspector will note the key observable factors that are relevant to the contravention. The licensee should be able to understand the key evidence of the alleged contravention by reading the information documented in the details section.

2. Distributing the contravention notice

- (a) The inspector will issue copy 1 of the contravention notice, the establishment copy, at the establishment at the time of identifying the contravention. If the inspector determines that it is

not safe to issue the contravention notice at that time, or if the inspector is attempting to remain undetected, the inspector will either:

- deliver a copy of the contravention notice to the establishment at another time, or
- mail a copy of the contravention notice to the establishment.

(b) The inspector will enter the information from the contravention notice on Ranger or POSSE.

(c) The inspector will:

- mail copy 2 to the licensee's office of record
- mail copy 3 to headquarters for filing on the headquarters establishment file, and
- file copy 4 on the field establishment file.

8.3 Correcting a Contravention Notice

Policy Rationale

Administrative law principles require that the licensee be able to fully answer an allegation that a contravention occurred. This means that the branch must provide accurate information to the licensee about the nature of the contravention in a timely fashion.

Mistakes on a contravention notice may be corrected. However, the process of correcting the mistake must meet administrative law principles and not compromise the right of the licensee to fully answer the allegation.

At an enforcement hearing, the process used to amend a contravention notice may be an issue. Therefore, it is important for inspectors to closely follow these procedures and to bear in mind, at all times, administrative law principles.

8.3.1 Error in the contravention notice is immediately identified

An inspector may amend a contravention notice if the inspector sees that an error was made when filling out a notice, provided the notice was not left at the establishment or sent to the licensee. If the inspector makes such an amendment, the contravention must still be clearly readable on the notice and the inspector must initial the change. Where amending the contravention notice will make the alleged contravention difficult to read, the inspector will prepare a new contravention notice for the alleged contravention.

[Liquor Control and Licensing Branch Policy]

8.3.2 Error identified after contravention notice has been issued

If an inspector notices an error in a contravention notice and the notice has been left at the establishment, or sent to the licensee, the inspector will issue a new contravention notice with the correct information as soon as possible and note that this contravention notice replaces the prior notice.

[Liquor Control and Licensing Branch Policy]

8.3.3 Error identified by regional manager

If the regional manager, upon review of the notice of enforcement action, concludes that the evidence supports a different contravention from the one identified on the contravention notice, the inspector will issue a new contravention notice with the correct information and note that this contravention notice replaces the prior notice.

[Liquor Control and Licensing Branch Policy]

8.3.4 Withdrawing a contravention notice

An inspector will withdraw a contravention notice and inform the licensee of the withdrawal if the contravention notice was issued in error.

[Liquor Control and Licensing Branch Policy]

8.3.5 Determining whether or not to recommend enforcement action on an amended contravention notice

When a contravention notice is amended as outlined in policy 8.3.3 above, the regional manager will consider the following factors and determine whether amending the contravention notice will allow the licensee to fully answer the allegation:

- how much time has passed since the licensee was notified of the contravention and whether this passage of time affects the ability of the licensee to fully answer the allegation
- the information set out in the details section of the original contravention notice and whether that information is sufficient to indicate the contravention identified by the regional manager
- whether the contravention identified by the inspector and the contravention identified by the regional manager are similar or related contraventions, e.g., serving minors and allowing minors on the premises, and
- other matters that may affect the licensee's ability to answer the allegation or the ability of the branch to amend the contravention notice in a timely fashion.

If the regional manager concludes that the original contravention notice can be amended in a manner that allows the licensee to fully answer the allegation, the inspector will prepare a new notice of enforcement action for the regional manager's consideration, based on the information contained on the amended contravention notice.

If the regional manager concludes that the original contravention notice cannot be amended in a manner that allows the licensee to fully answer the allegation, the inspector will prepare a no enforcement action recommended report.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

Procedures

1. Correcting a contravention notice that has not been issued to the licensee

When the inspector makes a mistake preparing a contravention notice and has not left the notice at the establishment or delivered it to the licensee, the inspector will do one of the following:

- (a) If the inspector has identified the wrong contravention and amending that mistake does not make the contravention notice unreadable, the inspector will:
 - draw a line through the incorrect contravention
 - initial the correction
 - indicate the correct contravention, and
 - issue the contravention notice in accordance with 8.2 Issuing a Contravention Notice.
- (b) If the inspector has made a mistake in the "details" portion of the contravention notice, the inspector will:
 - draw a line through the incorrect information
 - initial the correction
 - insert the correct information, and
 - issue the contravention notice in accordance with 8.2 Issuing a Contravention Notice.
- (c) If the inspector has indicated the wrong contravention or made a mistake in the "details" portion of the contravention notice and the notice cannot be changed without affecting the readability of the notice, the inspector will:
 - draw a line across the contravention notice. The inspector will ensure that all copies of the contravention notice are in place when this is done
 - write "VOID" on the notice
 - fill out a new contravention notice for the identified contravention
 - issue the new contravention notice in accordance with 8.2 Issuing a Contravention Notice, and
 - retain all copies of the voided notice in the book.

2. Correcting a contravention notice that has been issued to the licensee

When the inspector notices a mistake on a contravention notice and the notice has been left at the establishment or delivered to the licensee, whether or not the inspector will be recommending enforcement action for the alleged contravention:

- (a) The inspector will draw a line across every copy of the contravention notice in the inspector's possession.
- (b) The inspector will write "Amended by contravention notice # ___" on each copy of the notice. The inspector must fill in the number of the contravention notice that replaces the original contravention notice.
- (c) The inspector will fill out a new contravention notice for the identified contravention and identify in the "details" portion of the contravention notice that it replaces the original contravention notice. The inspector will include the number of the original contravention notice.
- (d) The inspector will send a copy of the new contravention notice with a copy of the original notice as amended to the licensee's office of record.
- (e) The inspector will deliver or send a copy of the new contravention notice with a copy of the original notice as amended to the establishment.
- (f) The inspector will ensure that all copies of the new contravention notice are distributed as required by 8.2 Issuing a Contravention Notice. The inspector will attach a copy of the original

notice as amended so that it is clear the contravention notice has been replaced with the amended notice.

3. Correcting a contravention notice after review of the notice of enforcement action

If the regional manager, upon review of the notice of enforcement action, concludes that the evidence supports a contravention different from the one identified on the contravention notice:

- (a) The regional manager will consider the factors outlined in policy 8.3.3 above and determine whether or not amending the contravention notice will allow the licensee to fully answer the allegation.
- (b) The regional manager will return the notice of enforcement action to the inspector, with direction on how to proceed.
- (c) The inspector will follow procedure 2 above to prepare and issue a new contravention notice that corrects the error on the original contravention notice.
- (d) If the regional manager concludes that the original contravention notice can be amended in a manner that allows the licensee to fully answer the allegation, the inspector will prepare a new notice of enforcement action for submission to the regional manager in accordance with 9.1 Recommending Enforcement Action and 9.2 Determining the Proposed Penalty.
- (e) If the regional manager concludes that the original contravention notice cannot be amended in a manner that allows the licensee to fully answer the allegation, the inspector will prepare a no enforcement action recommended report in accordance with 9.1 Recommending Enforcement Action, setting out the reason for no action, for example, time delay in correcting contravention notice.

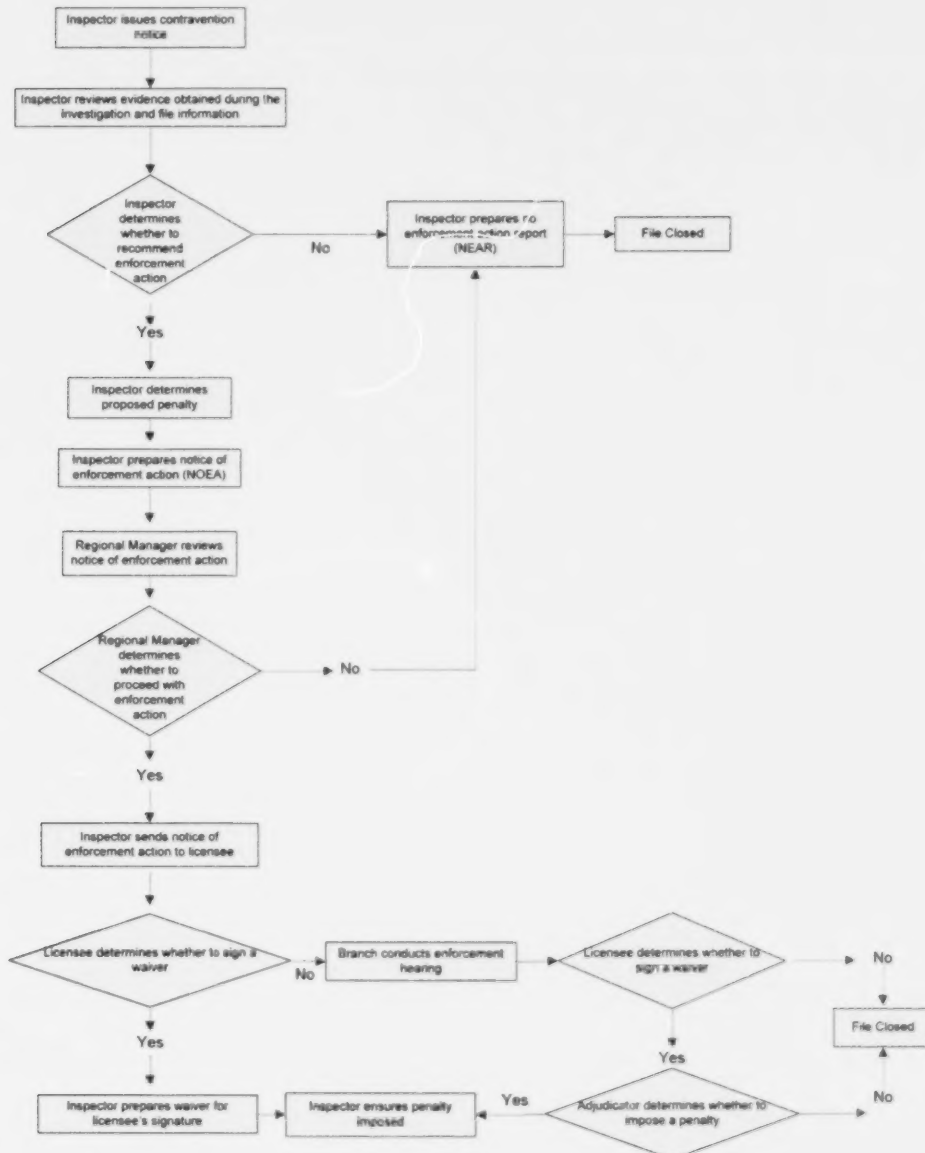
4. Withdrawing a contravention notice

- (a) If an inspector determines that a contravention notice was issued in error, the inspector will:
 - write "VOID" on all copies of the contravention notice in the inspector's possession
 - retain all copies of the voided notice in the book or in the field establishment file, and
 - void the contravention notice on Ranger or POSSE.
- (b) The inspector will inform the licensee that the contravention notice was issued in error and has been withdrawn.

SECTION 9: ENFORCEMENT PROCESS

9.0 Introduction

The enforcement process begins after an inspector gathers and analyses evidence and issues a contravention notice. The following flowchart graphically illustrates the major steps in the enforcement process.



Policies and procedures for each step in the enforcement process are outlined in this section under the following headings:

- Recommending Enforcement Action
- Determining the Proposed Penalty
- Proceeding with Enforcement Action
- Discontinuing the Enforcement Process
- Waiver Notice
- Enforcement Hearings, and
- Imposing Penalties.

9.1 Recommending Enforcement Action

Policy Rationale

A contravention notice does not always result in enforcement action against a licensee. The policies outlined in this section ensure that inspectors systematically review the evidence and circumstances of each contravention before deciding whether or not to recommend enforcement action.

Inspectors must fully document the reasons for their decisions. If enforcement action is recommended and approved by the regional manager, the notice of enforcement action must contain sufficient information to allow the licensee to decide whether to proceed to an enforcement hearing or sign a waiver notice.

If enforcement action is not recommended, it is important for the inspector to record all evidence of the contravention and the reasons for the recommendation in the no enforcement action recommended report. This information will be useful when determining whether or not to recommend enforcement action if further contraventions occur.

Policy

9.1.1 Determining whether to recommend enforcement action

Every time an inspector issues a contravention notice, the inspector will determine whether it is necessary to recommend enforcement action against the licensee in order to achieve voluntary compliance. The inspector will make this determination for each contravention identified on the contravention notice. Factors that the inspector may consider include:

- the licensee's compliance history
- the seriousness of the contravention
- the evidence of the contravention
- whether the evidence indicates that due diligence or another statutory defence applies, and
- any other relevant factors.

[Liquor Control and Licensing Branch Policy]

9.1.2 Recommending enforcement action when a new owner is using the licence.

The branch cannot take enforcement action against a person who is not a licensee. Until a licence is transferred, the legal entity that holds the licence is liable for contraventions associated with the licensed establishment. In the situation where a new owner is using a licence and has committed a contravention, inspectors will continue to follow policy 9.1.1 to decide whether to recommend enforcement action against the licensee of record.

Inspectors will determine:

- how long the new owner has been using the licence, and

- whether the new owner has initiated the process for transferring the licence. The inspector will contact headquarters licensing division to determine whether a transfer application has been received.

If the new owner has been using the licence for more than six weeks and has not initiated the process for transferring the licence, the inspector will write to the new owner advising that they are selling liquor unlawfully. Upon approval from the regional manager, the inspector will inform the local police.

[Liquor Control and Licensing Act, section 38; Liquor Control and Licensing Branch Policy]

9.1.3 Documenting the recommendation

The determination of whether or not to recommend enforcement action and the factors that led to that determination will be documented in either the notice of enforcement action (NOEA) or the no enforcement action recommended report (NEAR). Each report may include recommendations for one or more contraventions identified on the same contravention notice.

[Liquor Control and Licensing Branch Policy]

9.1.4 Notifying the licensee of proposed enforcement action

If an inspector proposes that enforcement action should be taken against a licensee, the inspector must notify the licensee in writing. The notice of enforcement action must include:

- the details of the proposed enforcement action
- the reasons for taking the action
- the information the inspector is relying on to prove, on a balance of probabilities, that the contravention(s) occurred
- if a suspension penalty is proposed, notification that a sign must be posted at the establishment indicating that a suspension penalty is being served, and
- notification to the licensee that, unless the licensee signs a waiver notice, the general manager may schedule an enforcement hearing. At the enforcement hearing, the general manager will determine whether the alleged contravention(s) occurred and what enforcement action, if any, will be taken.

[Liquor Control and Licensing Act, section 20(4); Liquor Control and Licensing Regulation, section 64]

9.1.5 Considering the use of additional compliance strategies

Every time an inspector determines whether or not to recommend enforcement action, the inspector will also consider whether any of the compliance strategies outlined in Section 6 Compliance Strategies may be appropriate to bring the licensee into voluntary compliance. These compliance strategies may be used whether or not enforcement action is recommended.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 20(4) and 38; Liquor Control and Licensing Regulation, section 64; Liquor Control and Licensing Branch Policy

Procedures

1. Determining whether to recommend enforcement action
 - (a) The inspector will review the contravention notice and the evidence gathered. If, upon further analysis, the inspector observes an error in the contravention notice, the inspector will follow the procedures outlined in 8.3 Correcting a Contravention Notice in order to correct the error.
 - (b) The inspector will review the field establishment file for information on past contravention notices, complaints, compliance meetings, and the licensee's compliance history.
 - (c) The inspector may contact the licensee for further information regarding the operation of the establishment and the contravention.
 - (d) The inspector may contact any police witnesses or other witnesses to the contravention and review with them the nature of their evidence.
 - (e) The inspector may contact any additional witnesses and obtain any further evidence that may be relevant in determining whether or not to recommend enforcement action.
2. Recommending enforcement action
 - (a) If an inspector decides to recommend enforcement action, the inspector will prepare a notice of enforcement action.
 - (b) The inspector will determine the proposed penalty and include it in the notice, in accordance with 9.2 Determining the Proposed Penalty.
3. Recommending no enforcement action
 - (a) If an inspector does not recommend enforcement action, the inspector will complete a no enforcement action recommended report.
 - (b) Once the report is completed, the inspector will print and file a copy of the report in the field office establishment file.
 - (c) The regional manager may review a no enforcement action recommended report and decide that the branch should proceed with enforcement action for a contravention. In this situation, the regional manager will direct the inspector to prepare and submit a notice of enforcement action for the contravention.

9.2 Determining the Proposed Penalty

Policy Rationale

After an inspector decides to recommend enforcement action for a contravention, the inspector must recommend a proposed penalty. The proposed penalty includes the type(s) of enforcement action and the level and / or terms of the penalty.

While section 20 of the Act, sections 63 to 69 and schedule 4 of the regulation guide the inspector in determining the proposed penalty, the inspector has a large degree of discretion both in determining the appropriate type(s) of enforcement action and the appropriate penalty within the range set out in the penalty schedule. The policies outlined in this section provide further guidance to inspectors to ensure that all licensees within the province are subject to similar penalties for similar contraventions.

Policy

9.2.1 Types of enforcement action

The general manager may do one or more of the following if the licensee contravenes the Act or regulations or fails to comply with a term of condition of the licence:

- impose terms and conditions on the licensee's licence or rescind or amend existing terms and conditions on the licence
- impose a monetary penalty on the licensee in accordance with the prescribed schedule of penalties
- suspend all or any part of the licensee's licence in accordance with the prescribed schedule of penalties
- cancel all or any part of the licensee's licence, and / or
- order the licensee to transfer the licence, within the prescribed period, to a person who is at arm's length from the licensee.

[Liquor Control and Licensing Act, sections 20(1) and (2)]

9.2.2 Determining the recommended penalty

When an inspector recommends enforcement action for a contravention, the inspector will also recommend the proposed penalty. The inspector may consider the following when recommending a penalty:

- the licensee's compliance history
- the seriousness of the contravention
- the circumstances of the contravention, and
- any other relevant factors.

[Liquor Control and Licensing Branch Policy]

9.2.3 Using the penalty schedule

Generally, an inspector will recommend a penalty that is within the penalty range outlined in schedule 4 for that type of contravention. To determine whether the first, second or subsequent penalty range applies, the inspector will:

- review whether the licensee has committed a contravention described by the same item of the schedule at that establishment within the past 12 months, and
- determine whether there has been a finding of contravention on that prior contravention, either in the form of a waiver notice or enforcement decision.

A contravention is:

- a first contravention if there has been no finding of contravention for the same type of contravention committed within the previous 12 months
- a second contravention if there has been a finding of contravention for the same type of contravention committed within the previous 12 months, and
- a subsequent contravention if there has been a second finding of contravention for the same type of contravention committed within the previous 12 months.

If the licensee has committed an alleged contravention of the same type within the past twelve months and the branch is in the process of pursuing enforcement action for that contravention, the inspector will:

- determine two recommended penalties based upon whether or not there is a finding of contravention on the prior contravention before a finding is made on the current contravention, and
- include both penalties in the notice of enforcement action.

Suspension penalties may be recommended for first, second or subsequent contraventions. Monetary penalties may only be recommended for first contraventions.

[Liquor Control and Licensing Regulation, section 68(1) and schedule 4; Liquor Control and Licensing Branch Policy]

9.2.4 Recommending a penalty greater than the schedule

When it appears to be in the public interest to do so, an inspector may recommend a suspension and / or monetary penalty that is greater than the penalty set out in schedule 4 to the regulation. In making this recommendation, the inspector will consider:

- the particular circumstances of the contravention, and
- the licensee's compliance history.

If an inspector recommends a penalty greater than the schedule, the inspector must fully document the reasons for the recommendation in the notice of enforcement action.

[Liquor Control and Licensing Act, sections 20(2.1) and (2.2); Liquor Control and Licensing Regulation, sections 66(2) and 68(2)]

9.2.5 Recommending a penalty for lesser included contraventions

If an inspector alleges an alternative lesser included contravention in the notice of enforcement action (e.g., allowing a minor on the premises may be alleged as an alternative to supplying liquor to a minor), the inspector will determine a proposed penalty for the lesser included contravention and include the proposed penalty and the reasons for the penalty in the notice of enforcement action.

[Liquor Control and Licensing Branch Policy]

9.2.6 Recommending the days on which a suspension will take effect

A suspension will begin on the same day of the week as the day on which the contravention occurred, unless the general manager considers a different day of the week is more appropriate. In determining the day of the week on which the contravention occurred, the inspector will consider the contravention to have occurred on the business day when the work shift began. For example, if a contravention occurs at 01:00 hours on a Sunday, the inspector will recommend that the suspension start on a Saturday, as the work shift began on a Saturday. The inspector will recommend that a suspension continue in effect on each succeeding business day until the number of days on which the suspension has been in effect equals the number of days of the suspension.

[Liquor Control and Licensing Regulation, section 67]

9.2.7 Recommending the length of a suspension

If an inspector recommends more than one suspension penalty against a licensee in a notice of enforcement action, the total recommended period of suspension must be the sum of the suspensions determined for each of the contraventions.

[Liquor Control and Licensing Regulation, section 66(3)]

9.2.8 Recommending the terms of a UBrew or UVin licence suspension

If an inspector recommends a suspension penalty for a UBrew or UVin licensee, the inspector will also recommend the terms of the suspension. In general, the terms of a UBrew or UVin suspension will allow persons who have already begun batches of liquor to continue with fermentation, filtration, racking, aging and bottling, if required to maintain product quality. Clients will not be allowed to begin new batches of liquor. Once a suspension has been served, licensees must deliver sales records and receipts from the suspension period to the inspector.

However, where it appears to be in the public interest to do so, the inspector may recommend a total suspension of a UBrew or UVin licence. A total suspension of a UBrew or UVin licence prohibits the licensee from providing goods, facilities or services to persons producing liquor in the establishment during the term of the suspension.

[Liquor Control and Licensing Act, sections 12.1(1) and 20(2)(d)]

9.2.9 Recommending the terms of a winery licence suspension

If an inspector recommends a suspension penalty for a winery, the inspector will also recommend the terms of the suspension. A winery licence may be suspended in whole or in part, in accordance with the prescribed schedule of penalties. In general, an inspector will recommend a suspension of the winery licence or endorsement only for that area of the winery where the contravention was identified, i.e., the sampling area, picnicking area, tour area, special event area or winery lounge.

[Liquor Control and Licensing Act, section 20(2)(d)]

9.2.10 Recommending a penalty against a distillery or brewery

If a contravention committed by a distillery or brewery involves the operation of a sampling area, an inspector may recommend a suspension of that part of the licence that allows the sale or service of liquor in the sampling area. For all other contraventions committed by distilleries or breweries, the inspector will not generally recommend a suspension penalty.

[Liquor Control and Licensing Branch Policy]

9.2.11 Recommending a penalty where a new owner is using the licence

Inspectors will continue to follow policies 9.2.2 to 9.2.10 when recommending a penalty against the licensee of record for contravention(s) committed by a new owner. In the situation where serious public safety contraventions occur while a new operator is using a licence, inspectors may recommend cancellation of the licence.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 12.1(1) and 20; Liquor Control and Licensing Regulation, sections 66 to 69 and schedule 4; Liquor Control and Licensing Branch Policy

Procedures

1. Determining the recommended enforcement action(s)
 - (a) The inspector will review section 20 of the Act, sections 66 to 69 of the regulation and schedule 4 to the regulation.
 - (b) The inspector will review the factors described in policy 9.2.2 above and consider the appropriate enforcement action based on those factors.
 - (c) If one of the contraventions is failure to admit an inspector or peace officer or serving liquor while under suspension, the inspector will follow the procedures and make the recommendations required for those contraventions as outlined in Section 27 of this manual.

2. Determining the level of a monetary penalty or suspension penalty

If the inspector concludes that a suspension and / or monetary penalty should be recommended:

- (a) The inspector will review the licensee's compliance history for that establishment to determine the level of penalty in schedule 4 that will apply for each identified contravention, i.e., a first, second or subsequent contravention penalty.
- (b) The inspector will determine the penalty range in schedule 4 for each contravention. If there is more than one contravention, there may be different penalty ranges for each contravention.
- (c) The inspector will consider whether it may be in the public interest to recommend a penalty greater than the range set out in the schedule.
- (d) If the inspector considers that it may be in the public interest to recommend a penalty greater than the range set out in the schedule, the inspector will contact compliance and enforcement headquarters in order to obtain a report on the licensee's compliance history.
- (e) The inspector will review the licensee's compliance history and the particular circumstances of the contravention and decide whether to recommend a greater penalty. If the inspector decides to recommend a penalty greater than the range set out in the schedule, the inspector will fully document in the notice of enforcement action the reasons why a greater penalty is required based on these two factors.

3. Completing the notice of enforcement action

- (a) The inspector will determine a recommended penalty for each contravention and the total recommended penalty. The total recommended penalty is the sum of all the proposed suspension and monetary penalties plus any other recommended enforcement action.
- (b) The inspector will record this recommendation and the analysis in the notice of enforcement action. The inspector will include in the report the reasons for both:
 - the type of enforcement action recommended, and
 - the level or terms of the recommended penalty.

The reasons may reference the factors outlined in policy 9.2.2 above, as well as the policy rationales outlined in Sections 10 to 28 for the specific contravention.

- (c) Once the notice of enforcement action is completed, the inspector will forward the notice to the regional manager for review and approval.

9.3 Proceeding with Enforcement Action

Policy Rationale

If an inspector decides to recommend enforcement action against a licensee, the regional manager reviews the inspector's recommendation in the context of the larger program goals and policies of the branch, as well as considering the sufficiency of the evidence of the contravention and the likelihood of success at an enforcement hearing. The review process also ensures consistency in enforcement action and penalty recommendations for similar contraventions throughout the province.

Policy

9.3.1 Determining whether to proceed with enforcement action

Every time an inspector prepares a notice of enforcement action, the inspector's regional manager will review the notice and decide whether to proceed with enforcement action against the licensee. The decision of whether to proceed with enforcement action will be based on:

- a review of the information provided in the notice of enforcement action, including the analysis and recommendation of the inspector
- the policies outlined in 9.1 Recommending Enforcement Action
- the goals of the Compliance and Enforcement Program outlined in 3.1 Program Goals
- whether the recommended enforcement action is consistent with branch policy and regulation
- whether there is enough evidence to find a contravention, and
- whether taking no action may invite similar breaches by other licensees.

[Liquor Control and Licensing Branch Policy]

9.3.2 Options after review of the notice of enforcement action

For each contravention, the regional manager may decide to:

- ask the inspector for further information before making a decision on whether to proceed with enforcement action
- proceed with the recommended enforcement action and proposed penalty
- proceed after changing the recommended enforcement action and / or proposed penalty, or
- decline to proceed with enforcement action for the contravention.

[Liquor Control and Licensing Branch Policy]

9.3.3 Documents to include with the notice of enforcement action

The inspector will not provide copies of all relevant documents with the notice of enforcement action sent to the licensee. In all cases, the inspector will attach to the notice of enforcement action copies of the contravention notice(s) and licensed premises check(s) relating to the contravention(s). The inspector will also include copies of the:

- liquor licence
- establishment's floor plan, and
- Enforcement Hearing Rules.

[Liquor Control and Licensing Branch Policy]

9.3.4 Changing the recommended enforcement action after a notice of enforcement action has been issued

After issuing a notice of enforcement action, the branch will only alter the recommended enforcement action when further information indicates that a change will more effectively:

- achieve voluntary compliance
- serve the public interest, and / or
- achieve speedy application of consequences for non-compliance.

The branch will not alter the recommended enforcement action solely because the licensee asks for a change in exchange for signing a waiver notice.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

Procedures

1. Deciding whether to proceed with enforcement action

- (a) Upon receipt of a notice of enforcement action, the regional manager will decide whether to proceed with enforcement action based on the factors set out in policy 9.3.1.
 - (b) If the regional manager decides that the evidence supports a different contravention from the one identified by the inspector, the regional manager will follow the procedures outlined in 8.3 Correcting a Contravention Notice when determining what action to take.
 - (c) If the regional manager finds that further information is required before making a decision on whether to proceed with enforcement action, the regional manager will send the notice back to the inspector with direction regarding the information that is required.
 - (d) If a notice of enforcement action is returned by the regional manager for further information, the inspector will follow the direction provided by the regional manager and resubmit the notice for the regional manager's review and approval.
2. Distributing the notice of enforcement action
Once the notice has been approved by the regional manager:
 - (a) The inspector will attach copies of documents to the notice as required by policy 9.3.3 above.
 - (b) The inspector will send a copy of the notice of enforcement action and appendices to the licensee's office of record by registered mail. If circumstances require, and if approved by the regional manager, the inspector may hand deliver the notice of enforcement action to the licensee's office of record.
 - (c) The inspector will file a copy of the notice of enforcement action, appendices and any attachments in the field establishment file.
3. Changing the recommended enforcement action after issuing the notice of enforcement action
 - (a) The inspector will direct all licensee requests for a change of enforcement action to the regional manager or advocate responsible for the notice of enforcement action.
 - (b) The regional manager and advocate will make a written recommendation to the DGM Compliance regarding the requested change.
 - (c) The DGM Compliance will consider the factors outlined in policy 9.3.4 and decide whether or not to approve the change.
 - (d) If the DGM Compliance decides to change the recommended enforcement action, compliance and enforcement headquarters will prepare a letter indicating the change in enforcement action.
 - (e) Compliance and enforcement headquarters will send a copy of the letter to:
 - the licensee's office of record by registered mail
 - the inspector for filing in the field establishment file, and
 - the advocate.
 - (f) Compliance and enforcement headquarters will record the change on POSSE and file a copy of the letter on the headquarters establishment file.

9.4 Discontinuing the Enforcement Process

Policy Rationale

Because the decision to proceed with enforcement action is a serious one, the branch will only discontinue the enforcement process after issuing the notice of enforcement action in limited circumstances. If the branch regularly decided to discontinue the enforcement process, this could result in licensees not taking notices seriously or inspectors not conducting a thorough examination of the facts and evidence prior to recommending enforcement action.

Policies in this section also address the situation where an establishment is destroyed or a licence is surrendered after the branch issues a contravention notice. In both cases, the licence is still valid. The branch must continue with the enforcement process in these situations to ensure that the branch file accurately reflects the licensee's compliance history.

Policy

9.4.1 Circumstances when enforcement process may be discontinued

The DGM Compliance will only discontinue the enforcement process for an alleged contravention in special circumstances, including:

- further information indicates that the wrong licensee was sent the notice of enforcement action
- further information indicates that evidence, fundamental to the decision to proceed, was incorrect, insufficient or unobtainable. Evidence is fundamental to a proceeding if an alleged contravention cannot be established without that evidence.
- further information indicates that it is not in the public interest to continue the enforcement process, or
- an enforcement decision delivered after the initiation of the process suggests that the legal basis for proceeding with the enforcement action is incorrect.

[Liquor Control and Licensing Branch Policy]

9.4.2 Discontinuing the enforcement process when multiple contraventions are included in a notice of enforcement action

The DGM Compliance may discontinue the enforcement process for one or more of the contraventions set out in the notice of enforcement action. The enforcement process will continue for the remaining contraventions.

[Liquor Control and Licensing Branch Policy]

9.4.3 Licensee requests to discontinue the enforcement process

A licensee or a representative of a licensee may not request a review of the decision to proceed with the enforcement process. A licensee or a representative of a licensee must make all argument regarding an alleged contravention to the enforcement hearing adjudicator.

[Liquor Control and Licensing Branch Policy]

9.4.4 Continuing with the enforcement process if an establishment is destroyed or the licence surrendered

The enforcement process will not be discontinued solely because the establishment that is the subject of the notice has been destroyed or the licensee has surrendered the licence for the establishment.

[Liquor Control and Licensing Branch Policy]

9.4.5 Cancellation of licence after voluntary surrender

If a licensee voluntarily surrenders their licence to the branch after a contravention notice has been issued, the branch will not cancel the licence until one of the following occurs:

- the inspector decides not to recommend enforcement action
- the regional manager decides not to proceed with enforcement action
- the licensee signs a waiver notice and the penalty is imposed, or
- the conclusion of the enforcement process and the imposition of any penalty.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Branch Policy

Procedures

1. The advocate and regional manager will make a written recommendation to the DGM Compliance when there is a concern that the enforcement process for a contravention may need to be discontinued after a notice of enforcement action has been issued to a licensee.
2. The DGM Compliance will determine whether the enforcement process should be discontinued, with regard to the factors outlined in policy 9.4.1.
3. If the DGM Compliance concludes that the enforcement process for one or more of the alleged contraventions set out in a notice of enforcement action should be discontinued, compliance and enforcement headquarters will prepare a discontinuation letter setting out:
 - the enforcement processes and the associated alleged contraventions that are discontinued, and
 - the enforcement processes and the associated alleged contraventions, if any, that will continue.
4. Compliance and enforcement headquarters will send a copy of the letter to:
 - the licensee's office of record by registered mail
 - the inspector for filing in the field establishment file
 - the advocate, and
 - the case management administrator.
5. Compliance and enforcement headquarters will record the decision to discontinue the enforcement process on POSSE and file a copy of the discontinuation letter on the headquarters establishment file.

9.5 Waiver Notice

Policy Rationale

In most circumstances, when the general manager intends to take enforcement action, the licensee has the opportunity to attend an enforcement hearing to make representations on the alleged contravention and / or the proposed penalty.

An enforcement hearing can be a time consuming and costly event for all participants. At times, licensees acknowledge that the alleged contravention occurred and accept the proposed penalty. To record this acknowledgement, the licensee will sign a waiver notice.

Policy

9.5.1 Waiver notice

The general manager may hold an enforcement hearing to determine whether the licensee committed an alleged contravention, unless the licensee signs a waiver notice. In the waiver notice, the licensee expressly and irrevocably:

- agrees that the licensee committed the contravention
- accepts the specified enforcement action
- waives the opportunity to have an enforcement hearing on the matter, and
- agrees that the finding of contravention and the specified enforcement actions will form part of the licensee's compliance history.

[Liquor Control and Licensing Regulation, section 64(3)]

9.5.2 Multiple contraventions or licences

The licensee may sign a waiver notice for one or more of the contraventions included in the notice of enforcement action. The enforcement process proceeds for any contraventions that are not the subject of a waiver notice. Where a licensee wishes to sign a waiver notice for contraventions relating to multiple licences, each licence must be the subject of a separate waiver notice.

[Liquor Control and Licensing Branch Policy]

9.5.3 Licensee must accept enforcement actions specified in the notice of enforcement action

In signing the waiver notice, the licensee may only accept the enforcement actions proposed in the notice of enforcement action for a contravention.

[Liquor Control and Licensing Branch Regulation, section 64(3)]

9.5.4 Period within which waiver notice must be signed

The licensee may sign a waiver notice up to the time of commencement of an enforcement hearing.

[Liquor Control and Licensing Branch Policy]

9.5.5 Penalty imposition dates

The inspector will not negotiate the dates when the penalty will be imposed with the licensee. The inspector will include in the waiver notice the dates for imposition of the penalty determined in accordance with policies 9.5.6 to 9.5.9 and 9.2 Determining the Proposed Penalty.

[Liquor Control and Licensing Branch Policy]

9.5.6 Date for payment of a monetary penalty

A monetary penalty must be paid within 30 days after the date of signing the waiver notice, unless a longer period is specified.

[Liquor Control and Licensing Act, section 20(2.6)]

9.5.7 Date for imposition of a suspension penalty

A suspension will generally begin on a business day between 7 to 14 days from the date of signing the waiver notice. A suspension will continue in effect on each succeeding business day until the number of days on which the suspension has been in effect equals the number of days of the suspension.

[Liquor Control and Licensing Regulation, section 67(2)(b); Liquor Control and Licensing Branch Policy]

9.5.8 Date for imposition of a change in licence terms and conditions

A change in terms and conditions of the licence will generally begin 7 days from the date of signing the waiver notice, unless the licensee requires a longer period of time to implement the change in terms and conditions.

[Liquor Control and Licensing Branch Policy]

9.5.9 Date for imposition of a licence cancellation

A cancellation will generally take effect 7 days from the date of signing the waiver notice.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 20(2.6); Liquor Control and Licensing Regulation, sections 64(3) and 67(2)(b); Liquor Control and Licensing Branch Policy

Procedures

1. Preparing the waiver notice

If the licensee informs the inspector that they would like to sign a waiver notice:

- (a) The inspector will determine the dates for imposition of the penalty for inclusion in the waiver notice, in accordance with policies 9.5.5 to 9.5.9. If a suspension penalty is being accepted, the inspector will review the field establishment file to determine the normal business days of the establishment on which the suspension should be served.
- (b) The inspector will prepare the waiver notice. The inspector will attach a copy of the notice of enforcement action to the waiver notice.
- (c) The regional manager will review and approve the waiver notice before the licensee signs it.

2. Signing and distributing the waiver notice

- (a) The inspector will review the contents of the waiver notice with the licensee prior to the licensee signing and dating the notice. Whenever possible, the licensee should attend at the field office to meet with the inspector to review, sign and date the waiver notice. If it is not possible for the licensee to attend at the field office, the inspector will send a copy of the waiver notice to the licensee's office of record and, once received, review the notice with the licensee in a telephone conversation.
- (b) The inspector will ask the licensee to sign the waiver notice and initial each page of the waiver notice on the bottom right hand corner. The inspector will ensure another person is present to witness the licensee's signature and sign the waiver notice as a witness. If the licensee does not attend at the field office in order to sign the waiver notice, the inspector will ensure that the notice is properly signed, dated and witnessed once it is received from the licensee.
- (c) If the licensee attends at the field office in order to sign the waiver notice, the inspector will provide the licensee with a copy of the signed waiver notice and attachments at the time of signing.
- (d) The inspector will mail:
 - a copy of the waiver notice to the licensee's office of record, and
 - the original waiver notice to compliance and enforcement headquarters.

The inspector will indicate in the covering letter to compliance and enforcement headquarters whether another regulatory agency, such as a local government, was involved in the identification of the contravention and needs to be kept informed of the result.

- (e) The inspector will file a copy of the signed waiver notice on the field establishment file.
- (f) The case management administrator will inform the advocate and adjudicator that the enforcement hearing process has been cancelled for the waived contraventions.

9.6 Enforcement Hearings

Introduction

If a licensee does not sign a waiver notice, the general manager will generally hold an enforcement hearing to decide whether a contravention occurred and whether to take enforcement action. The policies

and procedures that guide the enforcement hearing process and the conduct of enforcement hearings are outlined in the Enforcement Hearing Rules and the Enforcement Hearing Policy and Procedures Manual.

Role of the Inspector in the Enforcement Hearing Process

In general, the role of the inspector during the enforcement hearing process is limited to two main actions:

- the inspector may assist the advocate to prepare the branch evidence and representations, and
- the inspector may attend the enforcement hearing as a witness for the branch.

The inspector must provide the advocate with copies of documents that the advocate requests from the field establishment file. The inspector must be able to speak to these documents when attending an enforcement hearing as a branch witness. The inspector will familiarize themselves with the file history for the licensee and establishment in question and be prepared to give evidence concerning prior contravention notices, warnings, police LPC's, local government and community concerns and any other documentation or information relevant to the hearing.

In some situations, the advocate and the inspector's regional manager may request that the inspector gather further evidence, prior to the matter proceeding to an enforcement hearing.

9.7 Imposing Penalties

Policy Rationale

The signed waiver notice or enforcement decision sets out the details of the penalty to be imposed. The branch distributes a penalty letter following the signing of a waiver notice or an enforcement decision in order to provide licensees with detailed information on how the penalty will be imposed, how to comply with the penalty and the consequences of failing to comply with the terms of the penalty. This letter is also sent to local police, the Liquor Distribution Branch, local government and other interested parties to inform them of the imposition of the penalty.

Policy

9.7.1 Penalty letter

After a penalty has been imposed by a waiver notice or enforcement decision, compliance and enforcement headquarters will send the licensee a letter:

- confirming the penalty
- confirming the date on which the penalty will take effect
- describing the responsibilities of the licensee once the penalty is imposed, and
- describing the consequences of failing to comply with the terms of the penalty, e.g., serving liquor during a period of suspension or failing to pay a monetary penalty.

[Liquor Control and Licensing Branch Policy]

9.7.2 Imposing suspension penalties

The licence will be removed from the establishment for the term of the suspension penalty by an inspector or police officer. The licensee will allow signs stating that the licence of the establishment is suspended to be placed by an inspector or police officer in prominent locations. The licensee must keep the signs posted in the same location for the period of the suspension.

[Liquor Control and Licensing Branch Policy]

9.7.3 Inspection during suspension

An inspector or police officer will generally conduct at least one inspection of the establishment during the term of the suspension.

[Liquor Control and Licensing Branch Policy]

9.7.4 Refusal to renew or transfer licence if monetary penalty has not been paid or suspension has not been fully served

The general manager may refuse to renew or transfer a licence if a monetary penalty or suspension has been imposed upon the licence and either:

- the monetary penalty has not been fully paid, or
- the suspension has not been fully served.

[Liquor Control and Licensing Act, section 16.1]

9.7.5 Adding a term and condition to a licence if the licence is renewed or transferred during the period for payment of a monetary penalty

If a licence is renewed or transferred during the period specified for payment of a monetary penalty, the general manager may add a term and condition to the licence stating that the renewal or transfer is subject to payment of the monetary penalty by the specified date.

[Liquor Control and Licensing Act, section 12(2)]

9.7.6 Imposing a suspension penalty for failing to pay a monetary penalty

If a monetary penalty is not paid by the date specified in the waiver notice or enforcement decision, the general manager may impose a suspension penalty for the failure to pay. The contravention of failing to pay a monetary penalty and the associated suspension penalty are in addition to, not a replacement for, the original contravention and monetary penalty. Outstanding monetary penalties will be collected in accordance with branch revenue policy and procedures.

[Liquor Control and Licensing Regulation, schedule 4, item 44]

9.7.7 Transfer applicant must be arm's length from the licensee

In addition to the applicant eligibility criteria normally considered by the general manager on a licence transfer application, a transfer ordered as a result of an enforcement decision must be completed to a person who is at arm's length from the licensee, as defined in the Income Tax Act (Canada). A transfer applicant will not be considered an arm's length applicant if that person is related to the licensee or does not deal in an independent manner from the licensee.

[Liquor Control and Licensing Act, section 20(2)]

Authority References

Liquor Control and Licensing Act, sections 12(2), 16.1 and 20(2); Liquor Control and Licensing Regulation, schedule 4, item 44; Liquor Control and Licensing Branch Policy

Procedures

1. Preparing the penalty letter

- (a) If the penalty is a result of an enforcement decision, compliance and enforcement headquarters will record the decision date and the details of the penalty on POSSE.
- (b) Compliance and enforcement headquarters will prepare a penalty letter using the information from the signed waiver notice or the enforcement decision. If an enforcement decision is unclear with respect to any of the information that must be included in the penalty letter, compliance and enforcement headquarters will refer the matter to the enforcement hearing adjudicator for resolution.
- (c) Compliance and enforcement headquarters will send a copy of the letter to:

- the licensee's office of record by mail and fax, if necessary
 - the local government or First Nation where the establishment is located
 - the local police by mail and fax, if necessary, and
 - the Liquor Distribution Branch stores where the licensee purchases liquor, if the penalty includes a suspension or cancellation of the licence.
- (d) If the enforcement action resulted from a regulatory agency complaint, compliance and enforcement headquarters will also send a copy of the penalty letter to the regulatory agency in order to keep them informed.
- (e) Compliance and enforcement headquarters will file a copy of the letter on the headquarters establishment file.
2. If the licensee applies for judicial review and the penalty is stayed
- (a) If the licensee applies for judicial review and the Supreme Court of British Columbia orders a stay of the penalty before the penalty imposition date, compliance and enforcement headquarters will record the information on POSSE and notify all parties who received copies of the penalty letter that the licensee has applied for judicial review and that a stay of the penalty has been ordered.
- (b) Compliance and enforcement headquarters will continue monitoring any applications for judicial review and appeals, stays of penalty and court decisions. Compliance and enforcement headquarters will ultimately ensure the imposition of the penalty, if upheld.
3. Imposing a suspension penalty
- (a) Upon notification of the suspension dates, the inspector will determine whether they can attend at the establishment in order to:
- remove the licence
 - post the required signs, and
 - conduct at least one inspection.
- (b) If the inspector determines that they cannot attend at the establishment to perform any of these tasks, the inspector will request that the police attend at the establishment in order to do so.
- (c) An inspector or police officer will attend at the establishment at closing time on the day before the suspension is to start or prior to opening time on the day the suspension starts to:
- remove the licence from the establishment, and
 - place the signs as required in policy 9.7.2.
- (d) An inspector or police officer may conduct at least one inspection of the establishment during the period of suspension.
- (e) An inspector or police officer may attend at the establishment at the end of the suspension period to:
- return the licence, and
 - remove the signs described in policy 9.7.2.
- (f) If the inspector or police officer can not attend at the establishment in order to perform the tasks outlined in procedure (e) above, the inspector or police officer will request that the licensee attend at the branch field office or police station in order to retrieve their licence.
- (g) If a police officer performs the tasks outlined in procedure (a) above, the inspector will contact the police officer after the end of the suspension period to confirm that the suspension was served and prepare a note to file regarding the results of any inspection(s) conducted during the suspension period.

4. Variation or rescission of licence terms and conditions
 - (a) The licensing clerk will determine whether the change in licence terms and conditions requires:
 - a change to the terms and conditions recorded in POSSE, and / or
 - issuing a new licence.
 - (b) Where the change in terms and conditions requires a change in POSSE, the licensing clerk will change the licence terms and conditions in POSSE and, if required, prepare a new licence and mail a copy to:
 - the licensee, and
 - any other agency that needs to be notified of the change.
 - (c) The licensing clerk will file a copy of the licence on the headquarters establishment file.
 - (d) If the change is only temporary, the licensing clerk will review the file on the date specified for the end of the change in terms and conditions, input the new terms and conditions in POSSE and, if required, issue a new licence in accordance with procedure (b) above.
5. Monetary penalties
 - (a) The Manager, Financial Services enters the penalty amount and a "DO NOT RENEW" flag in the comments section of POSSE.
 - (b) When payment is received at headquarters, the POSSE clerk will:
 - enter the amount and date of payment into POSSE, and
 - notify the Manager, Financial Services via email that the penalty has been paid. The Manager, Financial Services will then remove the "DO NOT RENEW" flag from POSSE.
 - (c) The Manager, Financial Services will review the file on the payment due date. If full payment has not been received, the manager will notify the responsible inspector and regional manager via email that the monetary penalty is still outstanding and that collection action will be initiated.
 - (d) The Manager, Financial Services will initiate collection action, unless the inspector and regional manager are opposed. If the inspector and regional manager are opposed to collection action, the Manager, Financial Services will take no further action to collect the monetary penalty until requested to do so by the inspector and regional manager.
 - (e) If a monetary penalty payment cheque is returned as having not sufficient funds (NSF) to the branch, the Manager, Financial Services will:
 - reverse the record of payment recorded in POSSE, and
 - prepare a letter informing the licensee of the NSF cheque and requesting a replacement cheque in the form of a money order.
 - (f) The Manager, Financial Services will distribute copies of the NSF letter to the:
 - licensee
 - inspector, and
 - regional manager.
 - (g) If payment is not received within 30 days of the date of the NSF letter to the licensee, the Manager, Financial Services will initiate collection action.
6. Failing to pay a monetary penalty within the specified time period
 - (a) If payment is not received and collection action is initiated, compliance and enforcement headquarters will prepare a letter to the licensee indicating that the general manager will be reviewing whether to take enforcement action for the non-payment.
 - (b) Compliance and enforcement headquarters will:

- send a copy of the letter to the licensee's office of record, and
 - file a copy of the letter on the headquarters establishment file.
- (c) The regional manager will decide whether to proceed with enforcement action. In making this determination, the regional manager will consider the policies outlined in 9.3 Proceeding with Enforcement Action.
- (d) If the regional manager decides not to proceed with enforcement action, the regional manager will document this decision on POSSE.
- (e) If the regional manager decides to proceed with enforcement action, the regional manager will prepare a modified notice of enforcement action to the licensee. The notice will:
- inform the licensee of the alleged contravention and the proposed enforcement action, including the reasons for the proposed penalty, with reference to the licensee's compliance history, and
 - request the licensee's written representations on the alleged contravention and proposed enforcement action and set out a time period for the submission of these representations to the DGM Compliance.
- (f) The regional manager will send a copy of the notice by registered mail to the licensee's office of record.
- (g) At the end of the time period specified for submissions from the licensee, the DGM Compliance will review the notice and any reply from the licensee and decide whether the contravention occurred and whether to impose a suspension penalty.
- (h) The DGM Compliance will prepare a letter outlining the decision. If the DGM Compliance decides a suspension penalty will be imposed, the decision letter will set out the suspension penalty to be imposed and the dates the penalty will be served.
- (i) Compliance and enforcement headquarters will send a copy of the decision letter by registered mail to the licensee's office of record.
- (j) Compliance and enforcement headquarters will record the information from the decision letter on POSSE.
- (k) If a penalty is found, compliance and enforcement headquarters will prepare a new penalty letter and distribute as outlined in procedure 1 above.
7. Cancelling the licence
- (a) On the date specified for cancellation, the licensing clerk will cancel the licence in POSSE and prepare a licence cancellation letter.
- (b) The licensing clerk will:
- send a copy of the letter to the licensee
 - send a copy of the letter to any agency that needs to be informed of the licence cancellation, and
 - file a copy of the letter on the headquarters establishment file and indicate on the file that the licence has been cancelled.
8. Transferring the licence
- (a) Where the penalty includes an order to transfer the licence, the inspector will review the terms of the transfer and note that the transfer must be completed to a person who is at arm's length from the licensee.
- (b) If the inspector receives any inquiries from potential purchasers of the establishment, the inspector will inform them of the terms of the transfer as outlined in the penalty letter and provide

them with a copy of the arm's length transfer questionnaire as part of the transfer application package.

- (c) A licensing clerk will receive the transfer application package, and note the terms of the transfer order outlined in the penalty letter. Once all the supporting documents are in order, including the arm's length transfer questionnaire, the licensing clerk will refer the application to the general manager for review.
- (d) The general manager will review the transfer application and determine whether the transfer applicant is at arm's length from the licensee. The general manager may contact the transfer applicant or licensee for further information in order to make this determination.
- (e) If the general manager is not satisfied that the transfer applicant is at arm's length from the licensee, the general manager will prepare a letter to the transfer applicant indicating that their application for a transfer has not been approved.
- (f) If the general manager is satisfied that the transfer applicant is at arm's length from the licensee, the general manager will complete the approval section of the arm's length transfer questionnaire and return the application to the licensing clerk.
- (g) The licensing clerk will process the transfer application, print the new licence and send a copy of the new licence:
 - to the licensee, and
 - all other agencies that need to be informed of the licence transfer.
- (h) If the transfer is not completed by the specified date, compliance and enforcement headquarters will prepare a new penalty letter ordering the cancellation of the licence, and distribute as outlined in procedure 1 above.

SECTION 10: OPERATING OUTSIDE OF LICENCE PURPOSE

10.0 Introduction

The first item listed in the penalty schedule is the contravention of operating a licensed establishment in a manner that is contrary to the primary purpose of the licence. The primary purpose of a particular licence can be determined by referring to the Act, regulation and the terms and conditions of the licence.

Generally, this contravention involves food-primary establishments operating as liquor-primary establishments and that is the focus of this section of the manual. However, inspectors may also allege this contravention where other types of establishments are operating contrary to their primary purpose, for example:

- a UVin operating as a winery, or
- a winery operating a lounge or picnic area without the proper endorsement.

Policies and procedures for identifying a food-primary establishment operating as a liquor-primary establishment are included in this section under the heading:

Food-primary Establishment Operating Contrary to Primary Purpose.

10.1 Food-primary Establishment Operating Contrary to Primary Purpose

Policy Rationale

Food-primary establishments must be primarily engaged in the service of food during all hours of operation. Restaurants offer liquor service as an accompaniment to food, rather than as the primary activity. This contravention occurs if the primary focus of a food-primary establishment shifts from the service of food to the service of liquor.

It is contrary to the public interest for the branch to allow restaurants to operate as bars. The current liquor licensing process requires public and local government or First Nations input for liquor-primary licences but not for food-primary licences. Obtaining a liquor licence for a restaurant and then operating as a bar circumvents this process. Restaurants operating as bars also tend to be associated with community complaints from neighbours about noise, drunkenness and unruly patrons.

Policy

10.1.1 Primary purpose of a food-primary licence

A food-primary licence may be issued, renewed or transferred if the primary purpose of the business is the service of food during all hours of its operation. Food-primary establishments with restaurant lounges must maintain this primary purpose for the establishment as a whole.

[Liquor Control and Licensing Regulation, section 11(1)]

10.1.2 Terms and conditions specific to food-primary licences

In addition to the general terms and conditions applicable to all licensees, the following terms and conditions apply specifically to food-primary licences:

- liquor must not be served unless the kitchen is open and customers can order a range of different food, including appetizers and main courses or their equivalents, at all times. Serving salsa, chips, nachos and other similar types of “finger food” is not sufficient.
- the establishment must be operated as a restaurant at all times. A licensee can not shift its operation to become a bar during certain hours of the day.
- the ratio of food to liquor sales for the entire establishment must support the fact that the primary purpose is the service of food. Generally, liquor sales must not exceed food sales.
- the kitchen must be fully equipped and must be open and staffed whenever liquor is served
- the décor must be suitable for dining and table service. There must be enough tables and chairs and / or counters and stools to seat everyone. The tables must be big enough to hold the plates, cutlery and glassware associated with a full meal. There must be enough china, flatware and other table accessories for eating.
- patrons may stand or walk with drinks so long as the primary purpose is the service of food
- games and entertainment must not distract from the primary purpose of the service of food, and
- advertising must accurately reflect the service provided.

[Liquor Control and Licensing Act, section 12(2); Liquor Control and Licensing Regulation, section 11(2); Liquor Control and Licensing Branch Policy]

10.1.3 Terms and conditions specific to restaurant lounges

The following licence terms and conditions apply to food-primary establishments with an approved restaurant lounge:

- patrons within the lounge may order liquor without intending to order a meal
- the lounge must look distinct from the main dining area
- furnishings and lighting within the lounge area do not need to allow for meal service
- the rules for entertainment in the lounge area are the same as the main dining area
- hours of liquor service in the lounge area may not go beyond the hours of liquor service in the main dining area
- the licensee may advertise that it has a lounge, bar, cocktail lounge or cocktail bar
- the kitchen must be open and the full menu available whenever the lounge is open, and
- minors must be accompanied by adults in the lounge area.

[Liquor Control and Licensing Act, section 12(2); Liquor Control and Licensing Regulation, section 12(5); Liquor Control and Licensing Branch Policy]

10.1.4 Factors that may indicate operating contrary to primary purpose

Unlike other contraventions outlined in the penalty schedule, the inspector does not need to prove specific elements to allege the contravention of operating contrary to primary purpose. Rather, the inspector must consider the following factors that may indicate whether the primary purpose of the business carried on in the establishment is the service of food during all hours of its operation:

- whether the kitchen is open for the service of food
- kitchen equipment
- furnishings and lighting
- menu
- staff on duty and the duties they are performing

- type and hours of games and entertainment
- advertising
- hours of operation
- financial records
- the ratio of receipts from food sales to receipts from liquor sales, and
- any other relevant consideration.

A combination of these factors or only one factor that indicates a shift in focus may be sufficient to support the conclusion that an establishment is operating contrary to its primary purpose.

[Liquor Control and Licensing Regulation, section 11(3); Liquor Control and Licensing Branch Policy]

10.1.5 Contravention may consist of single instance of operating contrary to primary purpose

An inspector need not gather evidence of a pattern of operating contrary to the primary purpose of the licence in order to allege this contravention. The contravention of operating contrary to primary purpose may be alleged if an inspector gathers enough evidence to establish that the licensee was operating an establishment contrary to its primary purpose at one particular time.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 12(2); Liquor Control and Licensing Regulation, sections 11 and 12(5); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a food-primary establishment is operating contrary to its primary purpose, the inspector will observe the operation of the establishment and document their observations before notifying the licensee of their concerns.
2. The inspector will review any specific licence terms and conditions for the establishment.
3. The inspector will gather further evidence of the contravention. The inspector may:
 - interview staff
 - interview the licensee
 - interview patrons
 - interview neighbouring residents or businesses
 - request tapes from any video surveillance cameras in the establishment, and / or
 - obtain documents from the licensee, including:
 - sales records
 - food purchase records
 - liquor register
 - sales receipts
 - drink lists
 - menus
 - advertising, and
 - payroll records.
4. The inspector will carry copies of the dining establishment inspection record when conducting inspections of food-primary establishments and document the details of this contravention on that form. If the inspector does not have a copy of the form when conducting the inspection, the inspector will

record the details of the contravention in the inspector's notebook and transcribe the information onto a copy of the form once they have returned to the field office.

The following table illustrates the analysis inspectors must bring to the factors outlined in policy 10.1.4 above and the evidence that inspectors may gather for each factor. This is not an exhaustive list. Specific circumstances may arise that are illustrative of the shift away from a primary focus on the service of food.

Factor	Analysis	Evidence
Whether the kitchen is open and adequately staffed and equipped for the service of food	<p>Does the establishment serve a reasonable selection of menu items including appetizers and entrees, or their equivalents?</p> <p>Is the kitchen open and adequately staffed for the number of patrons?</p> <p>Is the equipment being used?</p> <p>Is there food in the process of being prepared or, alternatively, are all food items wrapped and stored?</p> <p>Does the food in the kitchen reflect the establishment's menu?</p> <p>If patrons are consuming food, has it been prepared at another establishment?</p> <p>Are there dirty dishes being processed through the dishwasher and are they consistent with what one would expect for the size of establishment and the number of patrons on site?</p>	<ul style="list-style-type: none"> • menu • food receipts • whether the kitchen is open • type of food in the kitchen • whether food is being prepared • types of food being prepared • types of items evident on tables • number of staff in the kitchen and their positions • number of patrons in the establishment • types of equipment • whether each piece of equipment is on • whether each piece of equipment is in use • number and type of dishes being processed in dishwasher • whether food has been stored, types of food that have been stored and method of storage • any indication that food has been prepared at another establishment, e.g., pizza boxes
Furnishings and lighting	<p>Is the décor suitable for dining and table service?</p> <p>Is there enough seating to accommodate the number of patrons?</p> <p>Are the table tops in the dining area big enough to lay a place setting for each of the patrons seated at the table?</p> <p>Is there enough cutlery and dishes for the number of patrons?</p> <p>Is the lighting consistent with a restaurant, e.g., strobe lighting or not enough lighting for a patron to distinguish if their food is properly cooked?</p>	<ul style="list-style-type: none"> • type of furnishings • type of décor • number of tables • number of chairs • number of patrons • size of table top and number of chairs for each table • amount of cutlery and crockery available • type of lighting and number of light fixtures • light level

Factor	Analysis	Evidence
Menu	<p>Are the majority of items listed on the menu food items or liquor or alcoholic beverages?</p> <p>Does the menu offer non-alcoholic beverages?</p> <p>Are there enough items on the menu for a person to have a meal?</p> <p>Are the items on the menu generally thought of as snacks or do they include a variety of entrees as well?</p> <p>Does the establishment have a smaller menu with limited choices available during certain times of the day, for instance, at the close of standard office hours for an establishment in a commercial area or in the later evening hours for establishments near entertainment facilities such as movie theatres?</p>	<ul style="list-style-type: none"> • food menu and hours of availability • liquor menu
Staff on duty and the duties they are performing	<p>Is there a doorman collecting cover charges or other staff performing duties that are not consistent with a restaurant whose primary purpose is the service of food?</p> <p>Are staff checking identification at the door or prohibiting entry of minors?</p>	<ul style="list-style-type: none"> • number of staff • staff positions and duties
Type and hours of games and entertainment offered by the licensee	<p>Can a patron order a meal while entertainment is offered?</p> <p>Do the games and entertainment complement the service of food, such as dine and dance entertainment, or do the games and entertainment detract from the service of food?</p> <p>Are games available that require patrons to get up from the dining area, such as billiards, foosball and standup video arcade games?</p> <p>Does the licensee hold an endorsement for the type of entertainment offered and the time during which it is being presented?</p>	<ul style="list-style-type: none"> • terms and conditions of licence with respect to games and entertainment • advertising of games or entertainment • types of games or entertainment available • number of games tables or machines • number of patrons playing games • number of patrons observing entertainment • location of games or entertainment • noise levels due to the games or entertainment • dates and times when games or entertainment are offered • whether patrons are ordering food while games or entertainment are occurring

Factor	Analysis	Evidence
Establishment advertising	<p>Does the establishment focus its advertising on the food or does it focus on entertainment and other attributes of the establishment?</p> <p>Does the advertising inside the establishment, such as posters, neon signs, coasters, glassware, etc. focus predominantly on liquor?</p> <p>Is the advertising for the establishment consistent with regulations and policy?</p>	<ul style="list-style-type: none"> types and content of signs and advertising
Hours of operation	<p>Are the hours of operation within the terms and conditions of the licence?</p> <p>Does the establishment shift its primary purpose away from the service of food during any hours of its operation?</p>	<ul style="list-style-type: none"> hours of operation indicated on licence hours of operation advertised for establishment kitchen hours payroll records for kitchen staff
Establishment's financial records	<p>Do the payroll records and food and beverage purchase and sales records for that business day support a primary focus on, and engagement in, the service of food?</p>	<ul style="list-style-type: none"> payroll records food purchase records liquor register food and liquor sales records
Ratio of food to liquor sales	<p>Do the receipts for the establishment demonstrate that its primary purpose is the service of food?</p> <p>If the ratio is inconsistent, can the high price of the liquor explain it, or are most of the sales liquor?</p>	<ul style="list-style-type: none"> menu liquor price list sales receipts

- The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for the operation of the establishment
 - whether the licensee has written policies and procedures with respect to service of food, games and entertainment or any of the other factors listed in policy 10.1.4 above
 - whether staff have been trained on these policies and procedures, and / or
 - whether the licensee has supervised or tested staff to ensure they were following these policies and procedures.
- Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 11(1) of the regulation "Operating contrary to primary purpose."

SECTION 11: MINORS

11.0 Introduction

Contraventions involving minors are a serious public safety concern for the branch. Items 2 and 3 of the penalty schedule list the most common contraventions involving minors that an inspector will encounter. However, inspectors may allege other contraventions involving minors, such as:

- a contravention of the terms and conditions of a licence by allowing a minor server in a food-primary establishment to mix drinks or pour liquor, or
- a contravention of section 33(1)(b) of the Act by possessing liquor for the purpose of supplying it to minors.

Detailed policies and procedures for these contraventions are not included in this manual. Contraventions involving minors at UBrews or UVins are discussed in Section 26 UBrews and UVins.

Police have the authority, *under the Offence Act*, to issue violation tickets directly to minors, and payment of the associated fines is tied to issuance and renewal of driver or vehicle licences. The following five violation tickets may be issued to minors:

Liquor Control and Licensing Act	Contravention	Amount
Section 34(1)	Purchase by minor	\$115
Section 34(1)	Consumption by minor	\$115
Section 34(2)	Minor in liquor establishment	\$115
Section 34(3)	Minor in possession	\$58
Section 34(4)	Presentation of false identification	\$115

This section outlines policies and procedures for identifying contraventions involving minors organized under the following headings:

- Supplying Liquor to Minors / Permitting Minors to Consume Liquor
- Permitting Minors on Licensed Premises

11.1 Supplying Liquor to Minors / Permitting Minors to Consume Liquor

Policy Rationale

Supplying liquor to minors and permitting minors to consume liquor are significant public safety issues because of:

- the effects of alcohol abuse on growing bodies and developing minds
- the effects on individuals and society of irresponsible drinking behaviour learned at an early age
- a minor's lack of capacity to metabolize alcohol in the same manner as an adult; therefore, liquor has a more intoxicating effect on minors, and
- liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft.

Policy

11.1.1 Prohibition against supplying liquor to minors

A person must not sell, give or otherwise supply liquor to a minor, except as allowed under policy 11.1.3 below.

[Liquor Control and Licensing Act, section 33(1)(a)]

11.1.2 Prohibition against permitting a minor to consume liquor

A person must not permit a minor to consume liquor in a place under his or her control.

[Liquor Control and Licensing Act, section 33(1)(c)]

11.1.3 Minors employed as servers in licensed establishments

Minors must not be employed as servers in licensed establishments, except for food-primary establishments and stadiums.

Minors employed in food-primary establishments and restaurant lounges are permitted to serve liquor but they are not permitted to open bottles, pour liquor or mix liquor. They must be supervised by adult staff.

[Liquor Control and Licensing Regulation section 45(4); Liquor Control and Licensing Branch Policy]

11.1.4 Elements of the contravention of supplying liquor to a minor

To allege the contravention of supplying liquor to a minor, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the person in question is a minor
- the minor was in possession of liquor, and
- the licensee sold or supplied the liquor to the minor.

[Liquor Control and Licensing Branch Policy]

11.1.5 Elements of the contravention of permitting a minor to consume liquor

To allege the contravention of permitting a minor to consume liquor, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the person in question is a minor
- the minor was consuming liquor, and
- the licensee knew or ought to have known that the minor was consuming liquor.

[Liquor Control and Licensing Branch Policy]

11.1.6 Defence to an allegation of supplying liquor to a minor or permitting a minor to consume liquor

In addition to the due diligence defence described in 4.3 Definitions, a licensee may defend against an allegation of:

- supplying liquor to a minor, or
- permitting a minor to consume liquor

by showing that, in reaching the conclusion that the person was not a minor, the licensee:

- asked the person to produce identification, and
- examined and acted on the authenticity of the identification.

[Liquor Control and Licensing Act, section 33(5)]

11.1.7 Acceptable types of identification

For the purposes of policies 11.1.6 above, the first piece of identification must be:

- a passport
- a driver's licence that displays a photograph and date of birth, or
- an identification card issued by a government agency that displays a photograph and date of birth.

The second piece of identification must display the person's name and either the person's signature or picture.

[Liquor Control and Licensing Regulation, section 45(1)]

Authority References

Liquor Control and Licensing Act, sections 33(1)(a), (1)(c) and (5); Liquor Control and Licensing Regulation, section 45(4); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes a patron who appears to be a minor in possession of, consuming or purchasing liquor, the inspector will observe and document the actions of the patron and staff before notifying the licensee of their concerns.
2. The inspector will ask the person for identification. The inspector will review the identification and consider any information the person provides to verify the identification. If the person refuses to provide identification to the inspector, the inspector will ask the licensee to ask the person for identification.
3. If the person does not have proper identification, the inspector will gather further evidence of each element of the contravention identified in either policy 11.1.4 or 11.1.5 above. The inspector may:
 - interview each staff member who had contact with the minor, e.g., servers, door staff
 - interview the licensee
 - interview the minor and obtain name and contact information
 - seize any forged, altered or impostor identification
 - obtain sales receipts for the minor's table
 - interview other patrons and obtain names and contact information, and / or
 - obtain any surveillance videos from the licensee.

Examples of the evidence that the inspector may gather for each element are listed in the following table:

Element	Evidence
The person in question is a minor	<ul style="list-style-type: none"> • name and date of birth on identification • whether identification is forged, altered or counterfeit • whether identification belongs to someone else • name and date of birth of minor
The minor was in possession of liquor or The minor was consuming liquor	<ul style="list-style-type: none"> • type and brand of liquor • whether empty liquor bottles and / or glasses were in front of the minor • whether liquor was in front of the minor • whether the minor was holding liquor • whether the minor was consuming liquor
The licensee sold or supplied the liquor to the minor	<ul style="list-style-type: none"> • whether staff took a drink order from the minor • whether staff sold or served liquor to the minor • sales receipt for the minor
The licensee knew or ought to have known that the minor was consuming liquor	<ul style="list-style-type: none"> • whether staff took a drink order from the minor • whether staff served liquor to the minor • sales receipt for the minor • whether the minor was openly consuming liquor • location of the minor in the establishment • level of intoxication of the minor • how often staff walked by the minor

4. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, or whether a defence under section 33(5) of the Act may apply, such as:
- the name and duties of the person who was the directing mind of the licensee responsible for door control and / or liquor service
 - whether the licensee has written policies and procedures on door control and / or service to minors
 - whether staff had been trained on these policies and procedures
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures
 - door control procedures
 - lighting
 - whether the minor was asked for identification at the door or before being served liquor
 - whether the identification presented to the inspector was the only identification in the minor's possession
 - whether the minor produced identification
 - whether door staff examined the identification
 - whether the identification appeared authentic
 - how often staff walked by the minor
 - how long the minor was in the establishment
 - the location of the minor in the establishment
 - how many other minors were in the establishment at the time
 - how busy the establishment was, and / or
 - the number of staff on duty.

5. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of either:

- section 33(1)(a) of the Act "Supplying liquor to a minor," or
- section 33(1)(c) of the Act "Permitting a minor to consume liquor."

The inspector will ask the licensee to tell the minor to leave the establishment and to escort them off the premises.

11.2 Permitting Minors on Licensed Premises

Policy Rationale

To avoid selling or serving liquor to minors and exposing them to adult-oriented entertainment or activities, the branch restricts their entry into licensed establishments. Minors are permitted in food-primary establishments, stadiums, concert halls, trains, airplanes and other establishments where the primary focus is not the service of liquor. If minors are accompanied by an adult who can exercise the proper degree of supervision, they are permitted in restaurant lounges.

Policy

11.2.1 Permitting minors on licensed premises

A licensee must not allow a minor on the premises except as permitted under policies 11.2.2 through 11.2.6 below.

[Liquor Control and Licensing Act, section 35]

11.2.2 Minors in retail stores

A minor may accompany a parent or guardian into premises where patrons purchase liquor exclusively for consumption off the premises. The following establishments fall within this category:

- licensee retail stores
- agency retail stores, and
- government liquor stores.

[Liquor Control and Licensing Act, section 35]

11.2.3 Minors in liquor-primary establishments

Minors may enter liquor-primary establishments if:

- they are employed or retained as entertainers to entertain in the establishment
- the establishment is a stadium, concert hall, convention centre, train, aircraft, motor vessel, airport or any other establishment where the primary purpose is not the service of liquor and the general manager has allowed minors
- they are in the playing area of a golf course in which liquor is being served to golfers from a take-out window, kiosk or beverage cart
- the establishment is a military mess located on a ship; the mess is land-based and the event is sponsored by the military or a member of the mess; or the minor is a full member of the mess
- they are in a bar at a downhill ski resort area and leave no later than 8:00 p.m., the general manager has allowed minors in the bar and the minor is accompanied by a parent or guardian
- they are in a licensed area of a curling club and leave no later than 10:00 p.m. and the general manager has allowed minors in the licensed establishment.
- the establishment is a liquor-primary club or recreation centre, there is an awards banquet and the competitors include minors

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2006

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Feb
2008

- the establishment is a liquor-primary club, the minor is in the green-lined area of the establishment when it is being used as an unlicensed area and the general manager has allowed minors in that area
- the establishment is a liquor-primary club where no other suitable area is available, the minor is accompanied by a parent or guardian, a full sit down meal is provided and the general manager has allowed minors, or
- they are otherwise allowed to be in the establishment by the general manager in the public interest.

[Liquor Control and Licensing Act, section 35(c); Liquor Control and Licensing Regulation, section 9(a); Liquor Control and Licensing Branch Policy]

11.2.4 Minors in food-primary establishments

Minors are allowed in food-primary establishments. Minors must be accompanied by an adult in a restaurant lounge.

[Liquor Control and Licensing Regulation, section 11]

11.2.5 Minors in winery lounges and special event areas

Minors are permitted in a winery lounge or special event area when they are:

- accompanied by a parent or guardian, or
- employed or retained as entertainers to entertain in the establishment.

[Liquor Control and Licensing Regulation, section 18(4)]

11.2.6 Entertainers who are minors

A minor may perform in the licensed area of an establishment but must not remain in the licensed area before the show, during intermission or after the show, unless the licence permits minors in the licensed area.

[Liquor Control and Licensing Branch Policy]

11.2.7 Procedures to ensure minors do not enter an establishment

A responsible licensee will implement procedures to ensure that minors do not enter an establishment where they are not allowed, such as:

- asking for additional identification if the primary pieces of identification are inconclusive
- recording the person's name and the serial number of identification if there is any doubt about its authenticity. The licensee may also have the person sign that the identification was shown.
- providing a well lighted area in which to show identification
- having an experienced doorman on the front door
- securing uncontrolled exits in accordance with any fire safety rule, regulation or code
- using video camera surveillance to record the image of the person and the identification on film, and / or
- using identification scanning devices.

During an inspection, the procedures put in place by a licensee to prevent minors from entering an establishment must be clear to the inspector.

[Liquor Control and Licensing Branch Policy]

11.2.8 Verifying authenticity of identification

A licensee may do one or more of the following to verify that identification is authentic:

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Oct
2007

- have the person provide a sample signature and compare the signature to the signature on the identification
- ask for additional pieces of identification. If the additional identification still leaves some uncertainty, the licensee should ask the patron to leave.
- ask the person what their zodiac sign is
- ask the person for their middle name and how to spell that name, and / or
- ask the person for information that is on the identification such as address, postal code, etc.

Licensees are encouraged to retain identification that is clearly false. Inspectors will collect false identification from licensees and forward to compliance and enforcement headquarters for return to the issuing agency, if possible.

[Liquor Control and Licensing Branch Policy]

11.2.9 Procedures to ensure minors do not enter an establishment as a term and condition of a licence

The general manager may impose procedures for ensuring minors do not enter an establishment as terms and conditions on a licence. The terms and conditions may include any or all of the procedures described in 11.2.7 above.

[Liquor Control and Licensing Act, section 12]

11.2.10 Elements of the contravention of permitting a minor on the premises

To allege the contravention of permitting a minor on the premises, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- minors are restricted or not allowed on the premises
- the person in question is a minor, and
- the licensee knew or ought to have known that the minor was on the premises.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 12 and 35; Liquor Control and Licensing Regulation, sections 9(a), 11 and 18(4); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes a patron who appears to be a minor in an establishment where minors are restricted or not permitted, the inspector will observe and document the activities of the patron and staff before notifying the licensee of their concerns.
2. The inspector will ask the person for identification. The inspector will review the identification and consider any information the person provides to verify the identification. If the person refuses to provide identification to the inspector, the inspector will ask the licensee to ask the person for identification.
3. If the person does not have proper identification, the inspector will gather further evidence of each element of the contravention identified in policy 11.2.9 above. The inspector may:
 - review the terms and conditions of the licence
 - interview each staff member who had contact with the minor, e.g., servers, door staff
 - interview the licensee

- interview the minor and obtain name and contact information
- seize any forged, altered or impostor identification
- obtain sales receipts for the minor's table
- interview other patrons and obtain names and contact information, and / or
- obtain any surveillance videos from the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
Minors are restricted or not allowed on the premises	<ul style="list-style-type: none"> • the terms and conditions of the licence respecting minors • in a winery lounge, special event area or licensee retail store, whether the minor is accompanied by an adult, parent or guardian • in a military mess, whether the minor is a member of the mess • whether the minor is employed as an entertainer
The person in question is a minor	<ul style="list-style-type: none"> • name and date of birth on identification • whether identification is forged, altered or counterfeit • whether identification belongs to someone else • name and date of birth of minor
The licensee knew or ought to have known that the minor was on the premises	<ul style="list-style-type: none"> • the location of the minor in the establishment • the length of time the minor was in the establishment • door control procedures • lighting • whether there are uncontrolled entrances or exits • whether the minor was asked for two pieces of identification at the door • whether the identification presented to the inspector was the only identification in the minor's possession • whether the minor had two pieces of identification • whether the identification produced by the minor was satisfactory • how often staff members walked by the minor • whether staff served liquor to the minor

4. In addition to the evidence gathered to determine whether the licensee "permitted" the contravention outlined in procedure 3 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for door control and / or liquor service
 - whether the licensee has written policies and procedures with respect to door control, entertainers who are minors and / or service to minors
 - whether staff had been trained on these policies and procedures
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures
 - how many other minors were in the establishment at the time
 - how busy the establishment was, and / or
 - the number of staff on duty.
5. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 35 of the Act "Permitting a minor on the premises."

6. The inspector will ask the licensee to tell the person to leave the establishment and to escort them off the premises.

SECTION 12: GAMBLING

12.0 Introduction

Items 5 and 6 of the penalty schedule outline minimum suspension and monetary penalties for two contraventions involving gambling. Policies and procedures for identifying those contraventions are included in this section under the following headings:

- Authorizing or Permitting Gambling, and
- Authorizing or Permitting a Gambling Device.

12.1 Authorizing or Permitting Gambling

Policy Rationale

The general prohibition against gambling in a licensed establishment relates to the concern that gambling, in whatever form, involves the exercise of judgment. The consumption of liquor impairs judgment. Therefore, it is in the public interest to permit only limited forms of gambling in a licensed establishment.

In addition, public safety considerations may arise when gambling occurs in a licensed establishment. For example, where the wager is a round of drinks, there is the danger of over-consumption and violent or quarrelsome behaviour. Even minor instances of gambling can affect the ability of the licensee to manage and control the establishment. In food-primary establishments, gambling is incompatible with the primary focus of the service of food.

Policy

12.1.1 Prohibition against gambling in a licensed establishment

A licensee must not authorize or permit gambling in the licensed establishment, unless the activity:

- is lawful under the Criminal Code, and
- has been allowed by the general manager.

[Liquor Control and Licensing Act, section 36]

12.1.2 Definition of gambling

Gambling is playing or gaming, for money or other stakes, on an uncertain event. It involves not only chance, but the hope of gaining something more than the amount paid. For example, a licensee holds a video game tournament where the participants pay money to play and receive "funny money" as prizes. The licensee then converts the "funny money" into tickets on a cash draw. The branch considers this gambling because contestants are playing with the hope of eventually winning the cash draw.

[Liquor Control and Licensing Branch Policy]

12.1.3 Lottery tickets

Unless otherwise restricted by the general manager, liquor-primary and licensee retail store licensees may sell lottery tickets if the licensee has been granted a lottery sales licence by the BC Lottery Corporation.

[Liquor Control and Licensing Act, sections 12(3)(e), 36 and 50(2); Liquor Control and Licensing Regulation, section 46; Liquor Control and Licensing Branch Policy]

12.1.4 Social occasion casino and bingo events

Liquor-primary, food-primary and winery lounge licensees may offer social occasion casino and bingo events in an area adjoining the licensed establishment, provided:

- the event is being held for charitable purposes and is hosted by a charitable organization
- the event has been licensed by the Gaming Policy and Enforcement Branch of the Ministry of Public Safety and Solicitor General
- the gaming licence is posted in a visible location within the establishment
- prizes do not include liquor or tokens redeemable for liquor
- liquor service or consumption does not take place in the area set aside for casino or bingo activities
- the area where liquor service and consumption takes place is sufficiently enclosed to prevent liquor being taken outside the area, and
- the event is not held in a licensed area, except in a banquet or other large room where the room can be divided so that there is an area for casino or bingo activities and a separate area for liquor service and consumption.

[Liquor Control and Licensing Act, sections 12(3)(e), 36 and 50(2); Liquor Control and Licensing Regulation, section 46; Liquor Control and Licensing Branch Policy]

12.1.5 Commercial casinos and bingo halls

If approved by the general manager, a commercial casino or bingo hall may operate a casino or bingo within a licensed establishment.

[Liquor Control and Licensing Act, sections 12(3)(e), 36 and 50(2); Liquor Control and Licensing Regulation, section 46; Liquor Control and Licensing Branch Policy]

12.1.6 Ticket raffles

Liquor-primary licensees may offer ticket raffle events such as meat draws, sports draws or 50/50 ticket raffles, provided:

- the raffle is held for a charitable purpose and is hosted by a charitable organization
- the raffle has been licensed by the Gaming Policy and Enforcement Branch of the Ministry of Public Safety and Solicitor General
- the gaming licence is posted in a visible location within the establishment
- prizes do not include liquor or tokens redeemable for liquor, and
- the winner is not required to be present to collect the prize, except for a 50/50 ticket raffle.

[Liquor Control and Licensing Act, sections 12(3)(e), 36 and 50(2); Liquor Control and Licensing Regulation, section 46; Liquor Control and Licensing Branch Policy]

12.1.7 Betting on horse races

If approved by the general manager, a liquor-primary licensee may offer on- and off-track betting on horse races.

[Liquor Control and Licensing Act, sections 12(3)(e), 36 and 50(2); Liquor Control and Licensing Regulation, section 46; Liquor Control and Licensing Branch Policy]

12.1.8 Elements of the contravention of authorizing or permitting gambling

To allege the contravention of authorizing or permitting gambling, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- unapproved gambling was occurring in the licensed establishment, and
- the licensee knew or ought to have known that gambling was occurring.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 12(3)(e), 36 and 50(2); Liquor Control and Licensing Regulation, section 46; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes unauthorized gambling occurring in a licensed establishment, the inspector will observe and document the actions of patrons and staff before notifying the licensee of their concerns.
2. The inspector will gather further evidence of each element of the contravention identified in policy 12.1.8 above. The inspector may:
 - review the terms and conditions of the licence regarding gambling
 - review any licence issued by the Gaming Policy and Enforcement Branch
 - interview staff members
 - interview the licensee
 - interview patrons involved in the gambling
 - seize any liquor being offered as prizes, and / or
 - obtain a copy of any advertisements.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
Unapproved gambling was occurring in the licensed establishment	<ul style="list-style-type: none"> • the nature of the gambling, e.g., a card game, a coin toss • the nature of the consideration and potential gain • the number of patrons and number of tables involved in the gambling • whether the licensee and staff were participating in the gambling • the location of the gambling in the establishment • whether the licensee or charitable organization had a gaming licence for the activity • if the activity was licensed, how the conduct of the activity contravened branch policy, e.g., prizes included liquor, casino held in a licensed area

Element	Evidence
The licensee knew or ought to have known that gambling was occurring	<ul style="list-style-type: none"> • whether the licensee was aware of the gambling • how often staff walked by or observed the gambling • whether the gambling activity was evident • whether and how the licensee organized the establishment to accommodate the gambling, e.g., tables at the back set up for card games • whether, directly or indirectly, the licensee received a portion of the bets • whether patrons paid a fee to play the game in the establishment • whether, directly or indirectly, the licensee received the fee or a portion of the fee patrons paid to play the game in the establishment • how long the unapproved gambling activity was taking place • whether the gambling was having an impact on the management and control of the establishment

- In addition to the evidence gathered to determine whether the licensee "permitted" the contravention outlined in procedure 2 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for supervising activities in the establishment
 - whether the licensee has written policies and procedures with respect to gambling
 - whether staff had been trained on any policies and procedures
 - whether the licensee supervised or tested staff to ensure they were following the policies and procedures
 - how busy the establishment was, and / or
 - the number of staff on duty.
- Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 36(2)(a) of the Act "Authorizing or permitting gambling."
- If appropriate, the inspector will contact the Gaming Policy and Enforcement Branch of the Ministry of Public Safety and Solicitor General and / or the police to report the unauthorized gambling.

12.2 Authorizing or Permitting a Gambling Device

Policy Rationale

As with the contravention of permitting or authorizing gambling in licensed premises, branch concerns with unauthorized gambling devices include:

- the ability of the licensee to manage and control a licensed establishment if gambling is occurring, and
- the ability of patrons to properly exercise judgment while consuming liquor.

Gambling devices in food-primary establishments may be incompatible with the primary purpose of service of food and may be accessed by minor patrons. Prescribed penalties under schedule 4 to the regulation for this contravention are higher than those for authorizing or permitting gambling, reflecting

the fact that the presence of an unauthorized gambling device implies some degree of authorization by the licensee.

Policy

12.2.1 Prohibition against gambling devices

A licensee must not authorize or permit a device used for gambling to be placed, kept or maintained in the establishment, unless the device is lawful under the Criminal Code and has been allowed by the general manager.

[Liquor Control and Licensing Act, section 36]

12.2.2 Approved gambling devices

Where the general manager has approved devices that may be used for gambling in a licensed establishment, they are approved only if they are used for entertainment and will not provide a payoff. The general manager has approved the following devices:

- Little Casino
- Golden Mini
- Mini Casino
- Nintendo Poker / slots, and
- Touchmaster 3000.

[Liquor Control and Licensing Branch Policy]

12.2.3 Elements of the contravention of authorizing or permitting a gambling device

To allege the contravention of authorizing or permitting a gambling device, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- an unapproved gambling device was placed, kept or maintained in the licensed establishment, and
- the licensee knew or ought to have known that the device was in the establishment.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 36; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes an unauthorized gambling device in a licensed establishment, the inspector will observe and document the actions of any patrons using the device and staff before notifying the licensee of their concerns.
2. The inspector will gather evidence of each element of the contravention identified in policy 12.2.3 above. The inspector may:
 - review the terms and conditions of the licence regarding gambling devices
 - interview staff members
 - interview the licensee
 - interview patrons using the device, and / or
 - photograph the device and its location.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
An unapproved gambling device was placed, kept or maintained in the licensed establishment	<ul style="list-style-type: none"> • the type of device, e.g., a video lottery terminal • whether the device is in working order • whether any patrons are using the device • how the device is used, e.g., the device is a coin operated machine • whether the device pays off • the nature of the consideration and potential gain • whether gambling devices are approved on the licence • the number of patrons using the device
The licensee knew or ought to have known that the device was in the establishment	<ul style="list-style-type: none"> • whether the licensee was aware of the device • how often staff walked by or observed the device • the location of the device in the establishment • whether staff or the licensee used the device • the length of time that the device was in use • whether the establishment had been arranged to accommodate the device • whether the device is stationary or portable • whether the gambling was having an impact on the management and control of the establishment

Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 36(2)(c) of the Act "Authorizing or permitting a gambling device."

SECTION 13: DISORDERLY OR RIOTOUS CONDUCT

13.0 Introduction

The penalty schedule includes two contraventions under the heading "Disorderly or Riotous Conduct." Policies and procedures for identifying these contraventions are included in this section under the headings:

- Authorizing or Permitting Disorderly or Riotous Conduct, and
- Authorizing or Permitting Unlawful Activities.

13.1 Authorizing or Permitting Disorderly or Riotous Conduct

Policy Rationale

Drunkenness, violence and riotous or disorderly conduct present serious safety concerns for staff, patrons and the surrounding community. These types of activities also impact a licensee's ability to manage and control the establishment. Licensees must take positive action to prevent these activities and stop them if they occur.

Policy

13.1.1 Prohibition against disorderly or riotous conduct

A licensee must not authorize or permit in the licensed establishment:

- drunkenness
- violent conduct
- quarrelsome conduct
- riotous conduct, or
- disorderly conduct.

For the purposes of this manual, these activities will be referred to as disorderly or riotous conduct.

[Liquor Control and Licensing Act, section 36(2)(a); Liquor Control and Licensing Branch Policy]

13.1.2 Licensee responsibility to notify police of disorderly or riotous conduct

If a licensee knows or suspects that disorderly or riotous conduct is occurring or may occur in the licensed establishment, the licensee must notify the police immediately. Failing to contact police may be evidence that the licensee either permitted or authorized the conduct.

[Liquor Control and Licensing Branch Policy]

13.1.3 Elements of the contravention of authorizing or permitting disorderly or riotous conduct

To allege the contravention of authorizing or permitting disorderly or riotous conduct, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- disorderly or riotous conduct was occurring in the licensed establishment, and
- the licensee knew or ought to have known that the conduct could occur or was occurring.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 36(2)(a); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes or suspects that riotous or disorderly conduct may occur, or is occurring, in a licensed establishment, the inspector will assess:
 - the ability of the licensee to manage the situation, and
 - the safety risk to the inspector, patrons and staff.
2. If the inspector concludes that the licensee is unable to manage the situation and the situation is unsafe, the inspector will contact the police and ask that they come to the licensed establishment.
3. The inspector will gather evidence of each element of the contravention identified in policy 13.1.3 above. The inspector may:
 - observe and document the activities of the licensee, staff and patrons
 - interview staff members
 - interview the licensee
 - interview patrons, and / or
 - obtain any surveillance videos from the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
Disorderly or riotous conduct was occurring in the licensed establishment	<ul style="list-style-type: none"> • the nature of the conduct, for example: <ul style="list-style-type: none"> • intoxicated patrons • loud voices, foul language, threats • minor physical violence, e.g., pushing, gesturing • major physical violence, e.g., violence involving more than two people, hitting, use of a weapon • the number of patrons and tables involved • where the conduct occurred • whether and how the conduct affected the licensee's ability to manage and control the establishment

Element	Evidence
The licensee knew or ought to have known that the conduct was occurring	<ul style="list-style-type: none"> • how often staff walked by and observed the situation ▪ whether the conduct was evident ▪ how the situation started • how long the conduct continued • how the licensee dealt with the situation • whether the licensee contacted the police • whether the licensee and staff participated in the conduct

4. In addition to the evidence gathered to determine whether or not the licensee "permitted" the contravention outlined in procedure 3 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for control of conduct in the establishment
 - whether the licensee adequately supervised the establishment to prevent disorderly or riotous conduct from occurring
 - how busy the establishment was, and / or
 - the number of staff on duty.
5. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 36(2)(a) of the Act "Authorizing or permitting disorderly or riotous conduct."

13.2 Authorizing or Permitting Unlawful Activities

Policy Rationale

Illegal activities in licensed establishments, such as trafficking drugs or fencing stolen property, may present safety concerns for staff, patrons and the surrounding community. These types of activities also impact a licensee's ability to manage and control the establishment. Licensees must take positive action to prevent these activities and stop them if they occur.

Policy

13.2.1 Prohibition against unlawful activities or conduct

A licensee must not authorize or permit any unlawful activities or conduct in the licensed establishment.

[Liquor Control and Licensing Act, section 36(2)(b)]

13.2.2 Licensee responsibility to notify police of unlawful activities

If a licensee knows or suspects that unlawful activities are occurring in the licensed establishment, the licensee must notify the police immediately. Failing to contact police may be evidence that the licensee either permitted or authorized the activities.

[Liquor Control and Licensing Branch Policy]

13.2.3 Elements of the contravention of authorizing or permitting unlawful activities

To allege the contravention of authorizing or permitting unlawful activities, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- unlawful activities were occurring in the licensed establishment, and
- the licensee knew or ought to have known that the activities were occurring.

For the purposes of alleging a contravention, unlawful activities include only those activities occurring in a licensed establishment which are illegal under the Criminal Code of Canada.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 36(2)(b); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes or suspects that unlawful activities are occurring in a licensed establishment, the inspector will:
observe and document the activities of patrons and staff, and
notify the police of their concerns.
2. The inspector will gather further evidence of each element of the contravention identified in policy 13.2.3 above. The inspector may:
pose as a patron in order to gain further information
contact police for further information
interview staff members
interview the licensee
interview patrons, and / or
obtain any surveillance videos from the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
Unlawful activities were occurring in the licensed establishment	<ul style="list-style-type: none"> • the nature of the activity, e.g., possessing drugs, using drugs, trafficking drugs, prostitution, selling stolen goods • whether the activity is prohibited under the Criminal Code • police response to the activity • whether the activity resulted in charges or convictions • the number of patrons and / or staff involved • whether and how the activities affected the licensee's ability to manage and control the establishment

Element	Evidence
The licensee knew or ought to have known that the activities were occurring	<ul style="list-style-type: none"> • whether the licensee and staff participated in the activities, e.g., staff dealing drugs or directing inspector to drug dealer in the establishment • how often staff walked by and observed the activities • where the activities were occurring • whether the activities were evident • how long the activities continued • how the licensee tried to prevent the activities, e.g., lie detector screening of staff • how the licensee dealt with the activities, e.g., imposing sanctions on involved staff • whether the licensee contacted the police

3. In addition to the evidence gathered to determine whether or not the licensee "permitted" the contravention outlined in procedure 2 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for controlling conduct in the establishment
 - whether the licensee adequately supervised the establishment to prevent unlawful activities from occurring
 - whether the establishment was busy at the time, and / or
 - the number of staff on duty at the time.

4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of 36(2)(b) of the Act "Authorizing or permitting unlawful activities."

SECTION 14: INTOXICATED PATRONS

14.0 Introduction

Items 9 through 11 of the penalty schedule are contraventions involving intoxicated persons. Policies and procedures for identifying each of these contraventions are outlined in this section under the following headings:

- Selling Liquor to an Intoxicated Person
- Permitting a Person to Become Intoxicated, and
- Permitting an Intoxicated Person to Remain.

Of relevance to all three contraventions is policy 14.1.2, which outlines branch policy on determining a person's level of intoxication.

14.1 Selling Liquor to an Intoxicated Person

Policy Rationale

The licensee is responsible for managing and controlling the establishment so that it does not negatively affect patrons or the community. Intoxication is a serious public safety issue. Intoxicated patrons may be a danger to themselves or the public. Intoxication can be a factor in many crimes, including domestic violence, drug offences, assaults and driving violations. Intoxication is also associated with behaviour that has a negative impact on communities, including late night noise, vandalism and unsanitary behaviour.

Intoxicated patrons may not be able to exercise sufficient judgment to stop consuming liquor. Providing liquor to a person who is already intoxicated increases the risk that they will harm themselves or others.

Policy

14.1.1 Prohibition against selling liquor to an intoxicated person

A person must not sell or give liquor to an intoxicated person or a person who is apparently under the influence of liquor.

[Liquor Control and Licensing Act, section 43(1)]

14.1.2 Determining the state of intoxication

Unlike the legal definition of impairment for the purpose of operating a motor vehicle or boat, there is no one scientific measure that determines whether a person is intoxicated. As a result of consuming liquor, an intoxicated individual does not have the normal use of physical or mental faculties. Determining whether a person is intoxicated requires:

- observing a person's mental and physical state, and
- comparing the person's mental and physical state and the expected behaviour from an ordinarily prudent and cautious individual in full possession of their faculties.

The following table prepared by W.K. Jeffreys, a court-recognized toxicology expert, may be used by inspectors to determine a person's stage of alcohol influence. A person who is exhibiting signs and symptoms consistent with stages 4, 5, 6 or 7 is intoxicated.

	Stage of Alcohol Influence	Clinical Signs/Symptoms
1.	Sobriety	<ul style="list-style-type: none"> • No apparent influence • Behaviour looks normal by ordinary observations • Slight changes are detectable by special tests
2.	Euphoria	<ul style="list-style-type: none"> • Mild euphoria, sociability, talkativeness • Increased self-confidence • Decreased inhibitions • Diminution of attention, judgment and control • Loss of efficiency in finer performance tests
3.	Excitement	<ul style="list-style-type: none"> • Emotional instability • Decreased inhibitions • Loss of critical judgment • Impairment of memory and comprehension • Decreased sensory response • Increased reaction time • Some muscular incoordination
4.	Confusion	<ul style="list-style-type: none"> • Disorientation • Mental confusion • Dizziness • Exaggerated emotional states (fear, anger, grief, etc.) • Disturbances of sensation • Diplopia (double vision) • Disturbances of perception of colour, form, motion, dimensions • Decreased pain sense • Impaired balance • Muscular incoordination • Staggering gait • Slurred speech
5.	Stupor	<ul style="list-style-type: none"> • Apathy • General inertia • Approaching paralysis • Marked decrease in response to stimuli • Marked muscular incoordination • Inability to stand or walk • Vomiting • Incontinence of urine and feces • Impaired consciousness, sleep or stupor
6.	Coma	<ul style="list-style-type: none"> • Complete unconsciousness, coma, anaesthesia • Depressed or abolished reflexes • Subnormal temperatures • Urinary and fecal incontinence • Decreased circulation and respiration • Possible death
7.	Death	<ul style="list-style-type: none"> • Death from respiratory paralysis

[Liquor Control and Licensing Branch Policy]

14.1.3 Elements of the contravention of selling liquor to an intoxicated person

To allege the contravention of selling liquor to an intoxicated person, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee sold or gave liquor to the person, and
- the person was intoxicated or apparently under the influence of liquor.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 43(1); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector receives a police or coroner's report on a fatal or serious injury motor vehicle accident where the driver was intoxicated and had been at a licensed establishment prior to the accident, the inspector will discuss the report with their regional manager and determine whether to:
 - retain a toxicology expert to determine the person's blood alcohol level at the time the person left the establishment, and
 - proceed with an investigation into whether the licensee sold liquor to an intoxicated person.
2. If an inspector observes a patron who appears to be intoxicated, the inspector will observe and document the activities of the person and staff before notifying the licensee of their concerns. If there is a possibility of a confrontation, the inspector should observe the intoxicated person from a distance.
3. The inspector will gather further evidence of each element of the contravention identified in policy 14.1.3 above. The inspector may:
 - interview staff who had contact with the person, e.g., servers, door staff
 - interview the licensee
 - interview the person and obtain name and contact information
 - obtain sales receipts for the person's table
 - interview other patrons at the person's table and obtain their names and contact information, and / or
 - obtain any surveillance videos from the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee sold or gave liquor to the person	<ul style="list-style-type: none"> • the type and brand of liquor sold or given • whether staff took a liquor order from the person • whether staff served the person liquor • whether the person had liquor in front of them • whether the person was holding liquor • whether the person consumed liquor • whether staff removed liquor from the person • whether a friend ordered liquor for the person • the number of empty liquor bottles and / or glasses in front of the person • the person's sales receipt

Element	Evidence
The person was intoxicated or apparently under the influence of liquor	<ul style="list-style-type: none"> the person's blood alcohol content the person's physical appearance, e.g., red or bloodshot eyes, dishevelled appearance, odour of liquor, glassy eyes, eyes with dilated pupils, eyes unable to focus, eyelids drooping the person's motor skills, e.g., unsteadiness on feet, staggering, exaggerated care in walking, slurred speech, fumbling with small objects such as money or cigarettes, lack of coordination, head bobbing, spilling drink, missing mouth when trying to drink from glass the person's level of alertness, e.g., incoherent speech, sleepy, sleeping, inability to concentrate, speaking very slowly and deliberately, lighting more than one cigarette at a time whether the person exhibited exaggerated emotionalism, e.g., talkativeness, excessive boisterousness, bravado, buying drinks for strangers, annoying other customers, overly friendly, bragging, talking loudly, sudden mood changes whether the person exhibited signs of aggression, e.g., arguing with employees or other customers, using profane language, physical violence whether the person exhibited rational and logical thought processes, e.g., irrational statements, no linear flow to statements, loss of train of thought

4. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for liquor service
 - whether the licensee has written policies and procedures about identifying and serving intoxicated persons
 - whether staff had been trained on these policies and procedures
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures
 - door control procedures
 - lighting
 - whether the person exhibited signs of intoxication in the presence of the licensee or staff, and / or
 - how many other intoxicated persons were in the establishment at the time.

5. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 43(1) of the Act "Selling liquor to an intoxicated person."

14.2 Permitting a Person to Become Intoxicated

Policy Rationale

The licensee is responsible for managing and controlling the establishment so that it does not negatively affect patrons or the community. Permitting a person to become intoxicated is a serious public safety issue. Intoxicated patrons may be a danger to themselves and others. Intoxication can be a factor in many crimes, including domestic violence, drug offences, assaults and motor vehicle infractions.

Intoxication is also associated with behaviour that has a negative impact on communities, including late night noise, vandalism and unsanitary behaviour.

Policy

14.2.1 Prohibition against permitting a person to become intoxicated

A licensee must not permit a person to become intoxicated.

[Liquor Control and Licensing Act, section 43(2)(a)]

14.2.2 Elements of the contravention of permitting a person to become intoxicated

To allege the contravention of permitting a person to become intoxicated, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the person was intoxicated, and
- the licensee knew or ought to have known that the person was becoming intoxicated.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 43(2)(a); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector receives a police or coroner's report on a fatal or serious injury motor vehicle accident where the driver was intoxicated and had been at a licensed establishment prior to the accident, the inspector will discuss the report with their regional manager and determine whether to:
 - retain a toxicology expert to determine the person's blood alcohol level at the time the person left the establishment, and
 - proceed with an investigation into whether the licensee permitted the person to become intoxicated.
2. If an inspector observes a patron who appears to be intoxicated, the inspector will observe and document the activities of the person and staff before notifying the licensee of their concerns. If there is a possibility of a confrontation, the inspector should observe the intoxicated person from a distance.

3. The inspector will gather further evidence of each element of the contravention identified in policy 14.2.2 above. The inspector may:
- interview staff who had contact with the person, e.g., servers, door staff
 - interview the licensee
 - interview the person and obtain name and contact information
 - obtain sales receipts for the person's table
 - interview other patrons at the person's table and obtain their names and contact information, and / or
 - obtain any surveillance videos from the licensee.

Examples of the evidence the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The person was intoxicated	<ul style="list-style-type: none"> • the person's blood alcohol content • the person's physical appearance, e.g., red or bloodshot eyes, dishevelled appearance, odour of liquor, glassy eyes, eyes with dilated pupils, eyes unable to focus, eyelids drooping • the person's motor skills, e.g., unsteadiness on feet, staggering, exaggerated care in walking, slurred speech, fumbling with small objects such as money or cigarettes, lack of coordination, head bobbing, spilling drink, missing mouth when trying to drink from glass • the person's level of alertness, e.g., incoherent speech, sleepy, sleeping, inability to concentrate, speaking very slowly and deliberately, lighting more than one cigarette at a time • whether the person exhibited exaggerated emotionalism, e.g., talkativeness, excessive boisterousness, bravado, buying drinks for strangers, annoying other customers, overly friendly, bragging, talking loudly, sudden mood changes • whether the person exhibited signs of aggression, e.g., arguing with employees or other customers, using profane language, physical violence • whether the person exhibited rational and logical thought processes, e.g., irrational statements, no linear flow to statements, loss of train of thought
The licensee knew or ought to have known that the person was becoming intoxicated	<ul style="list-style-type: none"> • how long the person was in the establishment • the location of the person inside or outside the establishment • the number of times staff walked by the person • the number of times staff served the person • whether the person exhibited signs of intoxication in the presence of the licensee or staff • the type and brand of liquor being served to the person • the number of drinks served to the person • the number of empty liquor bottles and / or glasses in front of the person • the person's sales receipt • whether the licensee had door staff on duty • lighting in the establishment

4. In addition to the evidence gathered to determine whether or not the licensee "permitted" the contravention outlined in procedure 3 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for liquor service
 - whether the licensee has written policies and procedures about identifying and preventing intoxication
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
5. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 43(2)(a) of the Act "Permitting a person to become intoxicated."

14.3 Permitting an Intoxicated Person to Remain

Policy Rationale

To avoid the possibility of further liquor consumption and avoid any harm to other patrons or staff, a licensee must not permit a person who is intoxicated to remain in the part of the establishment where liquor is served. To ensure their safety, intoxicated persons may remain in unlicensed areas of an establishment while waiting for assistance or a ride home.

Policy

14.3.1 Prohibition against permitting an intoxicated person to remain

A licensee must not permit an intoxicated person to remain in that part of the establishment where liquor is sold, served or otherwise supplied.

[Liquor Control and Licensing Act, section 43(2)(b)]

14.3.2 Elements of the contravention of permitting an intoxicated person to remain

To allege the contravention of permitting an intoxicated person to remain, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the person was intoxicated
- the person was in that part of the establishment where liquor is sold, served or otherwise supplied, and
- the licensee knew or ought to have known that an intoxicated person was in that part of the establishment.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 43(2)(b); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes a patron who appears to be intoxicated, the inspector will observe and document the activities of the person and staff before notifying the licensee of their concerns. If there is a possibility of a confrontation, the inspector should observe the intoxicated person from a distance.

2. The inspector will gather further evidence of each element of the contravention identified in policy 14.3.2 above. The inspector may:
- interview staff who had contact with the person, e.g., servers, door staff
 - interview the licensee
 - interview the person and obtain name and contact information
 - interview other patrons at the person's table and obtain their names and contact information, and / or
 - obtain any surveillance videos from the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The person was intoxicated	<ul style="list-style-type: none"> • the person's blood alcohol content • the person's physical appearance, e.g., red or bloodshot eyes, dishevelled appearance, odour of liquor, glassy eyes, eyes with dilated pupils, eyes unable to focus, eyelids drooping • the person's motor skills, e.g., unsteadiness on feet, staggering, exaggerated care in walking, slurred speech, fumbling with small objects such as money or cigarettes, lack of coordination, head bobbing, spilling drink, missing mouth when trying to drink from glass • the person's level of alertness, e.g., incoherent speech, sleepy, sleeping, inability to concentrate, speaking very slowly and deliberately, lighting more than one cigarette at a time • whether the person exhibited exaggerated emotionalism, e.g., talkativeness, excessive boisterousness, bravado, buying drinks for strangers, annoying other customers, overly friendly, bragging, talking loudly, sudden mood changes • whether the person exhibited signs of aggression, e.g., arguing with employees or other customers, using profane language, physical violence • whether the person exhibited rational and logical thought processes, e.g., irrational statements, no linear flow to statements, loss of train of thought
The person was in that part of the establishment where liquor is sold, served or otherwise supplied	<ul style="list-style-type: none"> • the location of the person in the establishment • whether the person was in the red-lined area of the establishment
The licensee knew or ought to have known that an intoxicated person was in that part of the establishment	<ul style="list-style-type: none"> • how long the person was in the establishment • how many times staff walked by the person • how many times staff served the person • whether the person exhibited signs of intoxication in the presence of the licensee or staff • the number and type of drinks the person was served • the number of empty liquor bottles and / or glasses in front of the person • the person's sales receipt • whether the licensee had door staff on duty • whether there were uncontrolled entrances or exits to the establishment • what the licensee or staff did to remove the person from the establishment

3. In addition to the evidence gathered to determine whether or not the licensee "permitted" the contravention outlined in procedure 2 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for door control
 - whether the licensee has written policies and procedures about identifying and removing intoxicated persons
 - whether staff had been trained on these policies and procedures
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures
 - how busy the establishment was, and / or
 - how many staff were on duty.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 43(2)(b) of the Act "Permitting an intoxicated person to remain."

SECTION 15: WEAPONS

15.0 Introduction

Under section 46(3)(b) of the Act, it is an offence for a person to possess a weapon without lawful excuse in a licensed establishment. Licensees must make sure people with weapons do not enter or remain in their establishments. Policies and procedures for identifying this contravention are outlined in this section under the heading:

- Permitting a Person with a Weapon to Enter or Remain.

15.1 Permitting a Person with a Weapon to Enter or Remain

Policy Rationale

The consumption of liquor affects behaviour and judgment. It reduces natural inhibitions. There is a greater likelihood of a volatile and dangerous situation occurring when a patron has been consuming liquor and is in possession of a weapon.

A licensee must manage and control the behaviour of patrons to ensure the safety of staff, patrons and the community. Allowing a person with a weapon to enter or remain in a licensed establishment is a serious public safety concern.

Policy

15.1.1 Prohibition against permitting entry of a person with a weapon

A licensee must not permit a person with a knife, firearm or weapon to enter or remain in a licensed establishment if the licensee knows that the person has the weapon in his or her possession without a lawful excuse.

[Liquor Control and Licensing Act, section 47(2)]

15.1.2 Licensee's responsibility to contact police

If a licensee knows or suspects that a person has a weapon, the licensee should notify the police immediately.

[Liquor Control and Licensing Branch Policy]

15.1.3 Definition of weapon

A weapon means anything used or intended for use:

- in causing death or injury to persons, whether designed for that purpose or not, or
- in threatening or intimidating any person.

[Liquor Control and Licensing Act, section 1(1)]

15.1.4 Possession of a weapon for self protection

Self protection is not a lawful excuse for possession of a weapon.

[Liquor Control and Licensing Act, section 47(1)]

15.1.5 Elements of the contravention of permitting a person with a weapon to enter or remain

To allege the contravention of permitting a person with a weapon to enter or remain, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee knew that the person possessed a weapon without lawful excuse, and
- the licensee knew or ought to have known that the person entered or remained in the establishment.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 1(1) and 47; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector knows or suspects that a person in a licensed establishment has a weapon, the inspector will contact the police immediately. If there is potential for harm to the inspector or a volatile situation, the inspector will leave the establishment.
2. The inspector will observe and document the activities of the person with the weapon and staff before notifying the licensee of their concerns.
3. The inspector will gather further evidence of each element of the contravention identified in policy 15.1.5 above. The inspector may:
 - interview staff
 - interview the licensee
 - interview the person with the weapon and obtain name and contact information
 - interview other patrons and obtain names and contact information
 - interview and obtain notes from any police inspectors in attendance, and / or
 - obtain any surveillance videos from the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee knew that the person possessed a weapon without lawful excuse	<ul style="list-style-type: none"> • the type of weapon, e.g., knife, firearm, broken bottle • name and description of the person • lighting • whether the weapon was visible • whether the person held the weapon • whether licensee or staff observed the weapon • whether licensee or staff were told about the weapon • whether the licensee or staff questioned the person about the weapon • whether the person had a lawful excuse, e.g., Kirpan carried by member of Sikh religion • whether the person used the weapon and a description of any injuries resulting from use of the weapon
The licensee knew or ought to have known that the person entered or remained in the establishment	<ul style="list-style-type: none"> • the location of the person • what the licensee did to remove the person from the establishment • whether the licensee contacted the police • whether experienced door staff were on duty • whether there were uncontrolled entrances or exits • whether the person ordered drinks or was served • whether the licensee used a metal detector to screen people entering the establishment

4. In addition to the evidence gathered to determine whether or not the licensee "permitted" the contravention outlined in procedure 3 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for door control and supervision of patrons in the establishment
 - whether the licensee has written policies and procedures on weapons
 - whether staff had been trained on these policies and procedures
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures
 - how busy the establishment was, and / or
 - the number of staff on duty.
5. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 47(2) of the Act "Permitting a person with a weapon to enter or remain."

SECTION 16: DISTURBANCE OF PEOPLE IN THE VICINITY

16.0 Introduction

Section 20(1)(c.1) of the Act allows the general manager to take enforcement action against a licensee who fails to take reasonable measures to ensure that the operation of their establishment does not disturb the surrounding community. Policies and procedures for identifying this contravention are outlined in this section under the heading:

- Failing to Take Reasonable Measures.

16.1 Failing to Take Reasonable Measures

Policy Rationale

Noise emanating from a licensed establishment or from patrons entering or exiting the establishment may disturb neighbouring businesses and residents. Indecent or illegal behaviour by patrons entering or exiting the establishment may result in property damage and / or public safety concerns.

Regard for community standards is one of the two operating principles that guide the branch's regulation of liquor. While it is not the intention of the branch to make licensees responsible for policing the streets around their establishments, the operational practices of licensees influence whether an establishment has a negative or positive effect on the surrounding community. Licensees cannot prevent every incident occurring around establishments, but they do have an influence over the number and severity of incidents and their effect on people in the vicinity.

Policy

16.1.1 Failing to take reasonable measures

The general manager may take action against a licensee who fails to take reasonable measures to ensure that the operation of the establishment is not contrary to the public interest and does not disturb people in the vicinity.

[Liquor Control and Licensing Act, section 20(1)(c.1)]

16.1.2 Elements of the contravention of failing to take reasonable measures

To allege the contravention of failing to take reasonable measures, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee is operating the establishment in a way that is contrary to the public interest
- the operation of the establishment has resulted in disturbance to people in the vicinity of the establishment
- the branch has informed the licensee of the disturbances and reasonable measures that should be taken to prevent the disturbances
- the licensee has not implemented the reasonable measures within a specified time period, and
- people in the vicinity of the establishment continue to be disturbed.

In order to form the opinion that a licensee has committed a contravention, the inspector must identify a pattern of disturbances which can be linked to a particular establishment. In general, the inspector will not issue a contravention notice for isolated or occasional incidents. Where there is more than one establishment in the same area, the inspector will need to collect evidence to establish which establishment is responsible for the disturbance.

[Liquor Control and Licensing Branch Policy]

16.1.3 Determining whether the manner of operating the establishment is contrary to the public interest

When determining whether a licensee is operating an establishment in a manner that is contrary to the public interest, the inspector will consider the number and severity of incidents and / or contraventions that have happened both inside and outside of the establishment. Incidents and / or contraventions that may indicate that a licensee is operating an establishment in a manner that is contrary to the public interest include:

- violent, quarrelsome, riotous or disorderly conduct
- excessive noise that results in complaints
- an establishment operating outside its licence category, particularly a food-primary operating as a liquor-primary establishment.
- urinating or defecating in the vicinity
- vomiting or passing out in the vicinity
- excessive littering in the vicinity, especially if the litter includes needles or condoms, and / or
- nuisance complaints from the surrounding properties that require police response.

[Liquor Control and Licensing Branch Policy]

16.1.4 Determining the vicinity of the establishment

A two to three block radius, or its equivalent, will generally be considered the vicinity of the establishment.

[Liquor Control and Licensing Branch Policy]

16.1.5 Determining whether the measures taken by a licensee to prevent disturbances are reasonable

Reasonable measures means measures that are:

- reasonable in the circumstances, and
- reasonably within the capacity of the licensee to effect.

Reasonable measures are steps or strategies that licensees take to ensure their establishments are run in a safe and considerate manner. The reasonableness of measures may vary from establishment to establishment depending on the circumstances. For example, if the establishment has never had complaints or problems relating to noise, it may not be reasonable to expect door staff to stop all exiting patrons and instruct them on respectful behaviour in the adjacent parking lot. However, if an establishment has experienced problems and complaints, this may be a reasonable measure for the licensee to employ to ensure the operation of the establishment does not disturb people in the vicinity.

The following table suggests measures that may be reasonable to reduce the risk of disturbance to people in the vicinity of the establishment for specific types of disturbances.

Type of disturbance	Reasonable measures to reduce this type of disturbance
Noise caused by people talking on the street in the line-up	Put up signs by the line-up Hire door staff to monitor the line-up and remind people of noise issues Limit length of line-ups Make structural changes to provide indoor line-up areas
Noise caused by people leaving the establishment during operating hours	Put up signs at exit doors Conduct staff training sessions to review Serving it Right principles
Noise caused by people leaving the establishment at closing time	Put up signs at exit doors Post staff by exits to remind customers to be considerate of nearby residents and keep noise to a minimum Issue announcements one hour before closure reminding people to be aware of good neighbour policy Apply to the branch for permission to allow people to remain beyond ½ hour after end of liquor service to reduce size of departing groups
Noise from music and other forms of entertainment that is ongoing and can be heard by nearby residents from within their homes	Close windows and upgrade ventilation systems Upgrade to double-sealed windows Reduce music volume and monitor noise levels Eliminate base frequencies that penetrate concrete and other materials Meet with neighbours to discuss options
Noise from music that is intermittent and can be heard by nearby residents when customers open the door to go in or out of the establishment	Install a second door Reduce music volume Meet with neighbours to discuss options
Indecent or illegal behaviour (e.g., fighting, vandalism, urinating in public, sex in public, drinking in parked cars in adjacent parking lot) in and around the entrance to the establishment and in controlled parking areas	Add lights to exterior of building that are directed to problem areas Hire security staff to patrol parking lots Cooperate with local police to set up parking lot patrols Refuse entry to customers who go frequently to and from cars Install video cameras directed at parking lot

[Liquor Control and Licensing Regulation, schedule 4, section 1(2); Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 20(1)(c.1); Liquor Control and Licensing Regulation, schedule 4, section 1(2); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector receives complaints that the operation of an establishment is disturbing people in the vicinity, the inspector will review the field establishment file to determine whether the complaint is an isolated incident or part of an ongoing problem.
2. If the complaint appears to be part of an ongoing problem, the inspector will gather further evidence of the operation of the establishment and disturbance to people in the vicinity. The inspector may:
 - conduct an inspection(s) of the establishment
 - interview staff
 - interview the licensee
 - interview neighbouring residents and businesses
 - contact local government to discuss complaints or incidents involving the establishment, and / or
 - contact police to discuss complaints or incidents involving the establishment and obtain information on calls for police service, anti-fighting bylaw tickets issued and arrests.
3. Either via letter or during a compliance meeting, the inspector will inform the licensee of:
 - the nature of the disturbances
 - the reasonable measures that the licensee should take to reduce future disturbances, and
 - the time frame for implementing these reasonable measures.

The inspector will document any commitments made by the licensee to implement the reasonable measures, including time frames for implementation.

4. The inspector will monitor whether the licensee implements the reasonable measures within the specified time period and whether the pattern of disturbances ends. If the disturbances continue, the inspector will gather further evidence of each element of the contravention identified in policy 16.1.2 above.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee is operating the establishment in a manner that is contrary to the public interest	<ul style="list-style-type: none"> • details of incidents or contraventions that indicate the licensee is operating contrary to the public interest, with particular regard to those items outlined in policy 16.1.3 above • whether police call out rates for the establishment are higher than for similar establishments or other establishments in the area • whether police have issued anti-fighting bylaw tickets at the establishment • whether police have arrested people at the establishment

Element	Evidence
The operation of the establishment has resulted in disturbance to people in the vicinity of the establishment	<ul style="list-style-type: none"> description of the location and vicinity of the establishment the names and addresses of the people in the vicinity who were disturbed details of the incidents, complaints or contraventions that resulted in disturbance to people in the vicinity indicators that link the disturbance to the operation of that particular establishment, e.g., disturbance always occurs at that establishment's closing time the impact of the disturbance on people in the vicinity
The branch has informed the licensee of the disturbances and reasonable measures that should be taken to prevent the disturbances	<ul style="list-style-type: none"> copies of compliance meeting forms, letters or inspector's notes details of discussions with the licensee
The licensee has not implemented the reasonable measures within a specified time period	<ul style="list-style-type: none"> whether the licensee implemented the reasonable measures as directed by the branch details of any reasonable measures implemented by the licensee whether the licensee implemented the reasonable measures within the timelines directed by the branch
People in the vicinity of the establishment continue to be disturbed	<ul style="list-style-type: none"> the names and addresses of the people in the vicinity who were disturbed details of the incidents, complaints or contraventions that resulted in disturbance to people in the vicinity indicators that link the disturbance to the operation of that particular establishment, e.g., disturbance always occurs at that establishment's closing time the impact of the disturbance on people in the vicinity

- In addition to the evidence gathered to determine whether or not the licensee has taken reasonable measures to prevent disturbances, the inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for operation of the establishment
 - whether the licensee has written policies and procedures on preventing disturbances to the community
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
- Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 20(1)(c.1) of the Act "Failing to take reasonable measures."

SECTION 17: OVERCROWDING

17.0 Introduction

A liquor licence sets out either the maximum number of patrons permitted within the areas where liquor may be consumed (patron capacity) or the maximum number of persons allowed in the establishment, including both patrons and staff (person capacity).

All licences issued after December 2, 2002 set out a maximum person capacity and this capacity is equal to the occupant load for the establishment. Licences issued prior to December 2, 2002 may state either a person or patron capacity. This capacity may be less than the occupant load.

The penalty schedule includes two contraventions for overcrowding in a licensed establishment:

- exceeding the person or patron capacity and the number of persons is less than or equal to the occupant load, and
- exceeding the person or patron capacity and the number of persons is greater than the occupant load.

Overcrowding that exceeds the occupant load presents a greater risk to public safety than overcrowding that does not exceed the occupant load, and this is reflected in the penalty schedule. However, policies and procedures for identifying these contraventions are the same and are grouped together in this section under the following heading:

- Overcrowding Beyond the Person or Patron Capacity.

17.1 Overcrowding Beyond the Person or Patron Capacity

Policy Rationale

Licensees that exceed their capacity by overcrowding are operating contrary to the public interest. Specifically, they are operating contrary to the principles of public safety and community standards.

The issue of public safety is most apparent when the overcrowding exceeds the occupant load. Getting out of a building safely during a fire or other threat is difficult in a place where liquor is served, loud music is playing and lighting is dim. The risk of death or serious injury is greater when the building is overcrowded.

The public interest in community standards is also relevant to the contravention of overcrowding. The maximum capacity established for a liquor-primary licence is the result of community input during the licensing process. The maximums are set so as to reduce the risk of negative impacts on neighbourhoods and communities. These negative impacts include late night disturbances, parking problems and traffic flow problems. Allowing licensees to exceed their approved capacity effectively negates this community input.

Policy

17.1.1 Definition of patron capacity

Patron capacity means the maximum number of patrons that may be in the red-lined area of the establishment. The red-lined area is designated by the general manager under section 12(3)(b) of the Act as the area where liquor may be sold, served and consumed.

[Liquor Control and Licensing Regulation, section 1(1)]

17.1.2 Definition of person capacity

Person capacity means the maximum number of persons allowed in the establishment by the general manager.

[Liquor Control and Licensing Regulation, section 1(1)]

17.1.3 Definition of occupant load

Occupant load means the least number of persons allowed in an establishment under:

- the provincial building regulations
- the Fire Services Act and British Columbia Fire Code Regulation, and
- any other safety requirements enacted, made or established by the local government or First Nation for the area.

[Liquor Control and Licensing Regulation, section 1(1)]

17.1.4 Prohibition against overcrowding beyond person capacity for licences issued or amended after December 2, 2002

The number of people in an establishment must not exceed the person capacity set by the general manager if the licence is a:

- food-primary licence
- liquor-primary licence, or
- winery licence with a winery lounge endorsement

issued after December 2, 2002, or amended in accordance with section 6(1) or 6(3) of the regulation.

[Liquor Control and Licensing Regulation, section 6(4)]

17.1.5 Prohibition against overcrowding beyond person or patron capacity for licences issued before December 2, 2002

The person or patron capacity of a licence issued before December 2, 2002 remains in effect as a term and condition of the licence until rescinded or amended by the general manager.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Regulation, section 71(2)(b)]

17.1.6 Taking person or patron counts

Whenever an inspector inspects an establishment and believes it may be overcrowded, the inspector will count the number of patrons or persons present. The inspector will not factor a margin of error into the count.

If the first count indicates that the establishment is overcrowded, the inspector will conduct a second count, unless the inspector must leave the establishment for reasons of personal safety. The inspector will record the results of both counts on the contravention notice, whether or not they are the same.

[Liquor Control and Licensing Branch Policy]

17.1.7 Licensee procedures to prevent overcrowding

A responsible licensee will implement procedures to ensure that overcrowding does not occur.

Procedures may include:

- having one or more door staff
- monitoring back entrances
- ensuring all door staff have counters
- ensuring all staff are clearly aware of the licensed capacity of the establishment, and / or
- ensuring that, in establishments with multiple points of entry, procedures are in place to monitor the number of patrons entering and exiting.

The general manager may impose procedures to prevent overcrowding as terms and conditions on a licence. The terms and conditions may include any or all of the procedures described above.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Branch Policy]

17.1.8 Elements of the contravention of overcrowding beyond the person or patron capacity

To allege the contravention of overcrowding beyond the person or patron capacity, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the number of patrons or persons in the establishment exceeded the licensed person or patron capacity, and
- the licensee knew or ought to have known that the establishment was overcrowded.

In addition, for purposes of determining the appropriate penalty range, the inspector must gather evidence to prove:

- the number of persons was less than, equal to or greater than the occupant load of the establishment.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Regulation, sections 1(1), 6(4) and 71(2)(b); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that an establishment may be overcrowded, the inspector will observe and document the activities of door staff, bouncers or other staff members, before notifying the licensee of their concerns.
2. In accordance with policy 17.1.6 above, the inspector will take an initial count. The inspector will review the licence and floor plan to verify the patron or person capacity, the layout of the areas, area capacities and, if available, the occupant load.

3. If, after taking the initial count, the inspector concludes that an establishment may be over its licensed capacity, the inspector will gather further evidence for each element of the contravention identified in policy 17.1.8 above. The inspector may:
- take a count of the total patrons in the establishment or a specific area to determine if the establishment or area is over its patron capacity. The inspector may ask the licensee to identify staff members so they can be subtracted from the total person count.
 - take a count of all persons in the establishment or a specific area to determine if the establishment or area is over its person capacity
 - if necessary to take an accurate count, ask the licensee to turn off the music and turn up the lights. If this request is made and not granted, the inspector will note this in the inspector's notebook.
 - ask the licensee, manager or supervisor to take a count
 - interview door staff and ask to see the numbers recorded on their counters
 - ask a police officer to take a count of the patrons and staff in the establishment if a police officer is present
 - interview the licensee and ask for a copy of the documentation from the local government authority that certifies the current occupant load
 - contact headquarters licensing department to confirm the patron or person capacity and determine whether or not the licensee has applied for an increase in capacity, and / or
 - contact the appropriate local government authority to determine the occupant load of the establishment, whether the licensee has applied to increase the occupant load of the establishment and the status of any application.

Examples of the evidence the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The number of patrons or persons in the establishment exceeded the licensed person or patron capacity	<ul style="list-style-type: none"> • the licensed capacity of the establishment or area • the counts taken by the inspector • any counts taken by staff • any other counts taken at the time • the number of counts taken • the method used to take all counts and any factors that may have influenced the accuracy of the counts • number of patrons, staff and entertainers • numbers recorded on the door staff's counters • whether the licensee helped the inspector by taking a count • whether the licensee helped the inspector by turning off the music, raising the level of the lights or providing any other assistance the inspector asked for

Element	Evidence
The licensee knew or ought to have known that the establishment was overcrowded	<ul style="list-style-type: none"> • whether the inspector was able to move easily through the establishment • whether the overcrowding resulted in disorderly conduct such as violent or rough patron behaviour, or unacceptable noise in the street from patrons leaving the establishment • door control procedures • licensee procedures for counting patrons • the number of door staff • whether staff are aware of the licensed capacity • the number of uncontrolled entrances and exits • steps the licensee took to reduce the overcrowding • how long the establishment was overcrowded
The number of persons was less than, equal to or greater than the occupant load of the establishment	<ul style="list-style-type: none"> • the occupant load of the establishment indicated by the licensee • the occupant load of the establishment indicated by the local government

4. In addition to the evidence gathered to determine whether or not the licensee "permitted" the contravention outlined in procedure 3 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for door control
 - whether the licensee has written policies and procedures on door control and overcrowding
 - whether staff had been trained on these policies and procedures
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures
 - whether the licensee has applied for an increase in person capacity
 - whether the licensee has applied for an increase in the occupant load, and / or
 - the number of staff on duty.

5. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee referencing either:
 - section 6(4) of the regulation, if the contravention is for a licence issued after December 2, 2002 or amended in accordance with section 6(1) or 6(3) of the regulation, or
 - section 12 of the Act and section 71(2)(b) of the regulation, if the contravention is for a licence issued before December 2, 2002 which has not been amended in accordance with section 6(1) or 6(3) of the regulation.

If the inspector is aware that the overcrowding is in excess of the occupant load, the inspector will indicate "Overcrowding beyond patron capacity beyond occupant load" or "Overcrowding beyond person capacity beyond occupant load" as the alleged contravention. In all other situations, the inspector will list "Overcrowding beyond patron capacity less than or equal to occupant load" or "Overcrowding beyond person capacity less than or equal to occupant load" as the alleged contravention. If the inspector later determines that the overcrowding is in excess of the occupant load, the inspector will amend the contravention notice.

6. If the establishment is overcrowded, the inspector will tell the licensee to reduce the number of people in the establishment.

SECTION 18: ILLICIT LIQUOR

18.0 Introduction

Illicit liquor is any liquor that has not been purchased, kept, prepared, served or sold in compliance with the Act, regulation or terms and conditions of a licence. Illicit liquor includes:

- liquor purchased “over the counter” from a government liquor store by a licensee
- liquor which has been smuggled from other provinces or other countries
- liquor provided as an inducement by a manufacturer
- adulterated or watered down liquor
- illegally manufactured liquor including UBrew or UVin products and home distilled or home fermented liquor
- medicinal, confectionery or culinary preparations used as a beverage or in mixed drinks
- stolen liquor
- diverted liquor products intended for export only, and
- non-duty paid liquor products.

Illicit liquor is a public safety priority for the branch. It has many negative social and financial consequences that result in a financial burden on taxpayers and lost government revenue. Illicit liquor:

- may contain contaminants that can cause illness or death
- contributes to job loss and unfair competition, and
- undermines the integrity of the province’s liquor control system and therefore threatens the safeguards that protect communities from the negative aspects of liquor consumption.

A number of provisions in the Act deal with the issue of illicit liquor or relate procedurally to inspections for illicit liquor. The regulation also prescribes certain practical measures to ensure that liquor purchases are from appropriate sources and that those purchases are properly accounted for.

Schedule 4 to the regulation identifies six contraventions under the category of “Illicit Liquor.” Policies and procedures for identifying these contraventions are included in this section under the following headings:

- Unlawfully Selling Liquor
- Diluting or Adulterating Liquor
- Unlawfully Purchasing Liquor
- Failing to Maintain a Liquor Register
- Purchasing Liquor over the Counter, and
- Selling Liquor Purchased Under Another Licence.

18.1 Unlawfully Selling Liquor

Policy Rationale

The unauthorized sale of liquor or the sale of liquor that has not been purchased from the Liquor Distribution Branch is an extremely serious contravention that incurs the highest minimum penalty ranges outlined in schedule 4. Illegally manufactured liquor, UBrew or UVin products or home fermented or distilled products are unregulated and may pose a serious threat to the health and safety of patrons who consume them.

The sale of liquor that has been:

- purchased from other jurisdictions
- received as samples or gifts from manufacturers
- smuggled, or
- stolen

results in revenue loss to government and unfair competition in the legitimate liquor industry.

Licensees are responsible for the liquor sold or kept for sale at their establishments. If a licensee purchases an establishment, including the liquor stock, it is their responsibility to ensure that the stock only contains liquor purchased from the Liquor Distribution Branch.

Policy

18.1.1 Prohibition against unlawfully selling liquor

A licensee must not:

- keep liquor for sale
- sell liquor, or
- give liquor for other consideration

except:

- liquor purchased from the Liquor Distribution Branch, and
- in accordance with the Act, the regulation and the terms and conditions of the licence.

[Liquor Control and Licensing Act, sections 38(1) and (3)]

18.1.2 Presumption that liquor found in licensed premises is kept for sale

In an enforcement hearing, the general manager may presume that a licensee has sold, kept for sale or given liquor contrary to the Act and regulation based on:

- the kind and quantity of liquor found in the licensed establishment or any storage areas, and / or
- the circumstances under which it is kept.

Unless the licensee presents convincing evidence to the contrary, the branch considers that liquor located in liquor service or storage areas is kept for sale to patrons.

[Liquor Control and Licensing Act, section 74(2)]

18.1.3 Liquor used for culinary purposes

Liquor kept for culinary purposes must stay in the kitchen area away from liquor kept for sale.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Branch Policy]

18.1.4 Storing private liquor

Private liquor belonging to a licensee, employee or patron must not be kept at a licensed establishment or in storage areas associated with the establishment.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Branch Policy]

18.1.5 Elements of the contravention of unlawfully selling liquor

To allege the contravention of unlawfully selling liquor, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee kept liquor for sale, sold liquor or gave liquor for other consideration, and
- the liquor was not purchased from the Liquor Distribution Branch.

[Liquor Control and Licensing Branch Policy]

18.1.6 Elements of the contravention of improperly storing liquor

To allege the contravention of improperly storing liquor, an inspector must gather enough evidence to prove either of the following elements on a balance of probabilities:

- the licensee kept private liquor at the establishment, or
- the licensee did not separate liquor kept for culinary purposes from liquor kept for sale.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 12, 38 and 74(2); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee is unlawfully selling liquor or is improperly storing liquor, the inspector may:
 - organize an illicit liquor inspection in accordance with the policies and procedures outlined in the Illicit Liquor Field Manual, and / or
 - gather evidence of the contravention during the course of a regular inspection.
2. The inspector will gather evidence of each element of the contravention identified in policy 18.1.5 or 18.1.6 above. The inspector may:
 - interview staff
 - interview the licensee
 - obtain a copy of the liquor register and compare with the liquor stock
 - inspect all liquor storage areas
 - record CPC or SKU codes from products
 - obtain records from LDB detailing liquor purchases for the licensee
 - seize liquor, and / or
 - take liquor samples for testing and analysis.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
<p>The licensee kept liquor for sale, sold liquor or gave liquor for other consideration</p> <p>or</p> <p>The licensee kept private liquor at the establishment</p> <p>or</p> <p>The licensee did not separate liquor kept for culinary purposes from liquor kept for sale</p>	<ul style="list-style-type: none"> • brand and type of liquor • amount of liquor • the location of the liquor • whether bottles were opened • whether the liquor was sold to patrons • sales receipts • whether patrons were in possession of the liquor • whether the licensee intended to sell the liquor • whether the liquor was private liquor • whether the liquor was for culinary purposes
<p>The liquor was not purchased from the Liquor Distribution Branch</p>	<ul style="list-style-type: none"> • liquor register entries • LDB sales data • CPC or SKU codes from products • whether CPC or SKU codes on products matched sales data from LDB • features that indicate the liquor was not purchased from the LDB, e.g., unfamiliar labels, duty free labels, export labels, no labels • results of liquor analysis

3. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - whether the licensee reconciled the liquor in the establishment with the liquor registry upon purchase of the establishment
 - the name and duties of the person who was the directing mind of the licensee responsible for liquor inventory and storage
 - whether the licensee had policies and procedures for storage of personal liquor, resale of samples provided by manufacturers, etc.
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of either:
 - section 38(1) of the Act "Unlawfully selling liquor," or
 - section 12 of the Act "Improperly storing liquor."

18.2 Diluting or Adulterating Liquor

Policy Rationale

To ensure product safety and fair value to patrons, section 38.1 of the Act prohibits licensees from watering down, adding to, or otherwise diluting or adulterating liquor, except when filling a customer's drink order.

Policy

18.2.1 Prohibition against diluting or adulterating liquor

A licensee must not:

- dilute or adulterate liquor purchased from the Liquor Distribution Branch, or
- keep liquor for sale, sell liquor or give liquor for other consideration that has been diluted or adulterated after its purchase from the Liquor Distribution Branch

except upon the request of a customer ordering a drink.

[Liquor Control and Licensing Act, sections 38.1(1) and (2)]

18.2.2 Prohibition against refilling or adding to bottles or containers

A licensee must not refill a bottle or container or add to the contents of a bottle or container purchased from the Liquor Distribution Branch.

[Liquor Control and Licensing Act, section 38.1(3)]

18.2.3 Prohibition against pre-mixing drinks

A licensee must not pre-mix drinks, unless authorized by the general manager.

[Liquor Control and Licensing Regulation, section 40]

18.2.4 Elements of the contravention of diluting or adulterating liquor

To allege the contravention of diluting or adulterating liquor, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee diluted or adulterated liquor, or kept it for sale or sold it, and
- the dilution or adulteration was not done at the request of a person ordering a drink.

[Liquor Control and Licensing Branch Policy]

18.2.5 Elements of the contravention of refilling or adding to bottles or containers

To allege the contravention of refilling or adding to bottles or containers, an inspector must gather enough evidence to prove that:

- the licensee added to or refilled the bottle or container.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 38.1; Liquor Control and Licensing Regulation, section 40; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes a licensee or staff member diluting or adulterating liquor or refilling a bottle or container, the inspector will observe and document the actions of the licensee or staff member before alerting the licensee to their concerns.
2. The inspector will gather further evidence of each element of the contravention identified in policy 18.2.4 or 18.2.5 above. The inspector may:
 - interview staff
 - interview the licensee
 - obtain a copy of the liquor register
 - seize liquor products
 - take liquor samples for testing and analysis, and / or
 - inspect behind the bar, coolers and storage areas.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
<p>The licensee diluted or adulterated liquor, or kept it for sale or sold it</p> <p>or</p> <p>The licensee added to or refilled the bottle or container</p>	<ul style="list-style-type: none"> • type of liquor and brand name • whether the fluid looked, smelled or tasted like liquor • whether the contents of the bottle matched the description on the label • results from analysis of seized liquor • results from analysis of liquor samples • whether bottle or container labels were worn or otherwise indicated that the bottle or container had been refilled or added to • the name and duties of the person who diluted or adulterated the liquor • the name and duties of the person who refilled or added to the bottle or container • the location of the diluted or adulterated liquor or refilled bottle or containers • whether the adulterated or diluted liquor was sold to patrons
The dilution or adulteration was not done at the request of a person ordering a drink	<ul style="list-style-type: none"> • whether the dilution or adulteration was done as a result of a patron ordering a drink • whether the dilution or adulteration was done at the bar in view of patrons • whether drinks were pre-mixed

3. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for the bar and liquor inventory
 - whether the licensee has written policies and procedures on pre-mixing drinks or refilling bottles or containers
 - whether staff had been trained on these policies and procedures, and
 - whether the licensee adequately supervised or tested staff to ensure they were following these policies and procedures.

4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of either:
- section 38.1(1) of the Act "Diluting or adulterating liquor," or
 - section 38.1(3) of the Act "Refilling or adding to a bottle or container."

18.3 Unlawfully Purchasing Liquor

Policy Rationale

As with the contravention of unlawfully selling liquor, branch concerns with respect to the purchase of liquor other than through the Liquor Distribution Branch or another designated outlet include:

- health and safety concerns associated with liquor products that are not regulated or inspected
- revenue loss to government
- unfair competition in the legitimate liquor industry, and
- undermining the integrity of the liquor control system.

A licensee who purchases liquor from a Liquor Distribution Branch outlet but does not identify himself or herself as a licensee commits the related contravention discussed in 18.5 Purchasing Liquor over the Counter.

Policy

18.3.1 Prohibition against unlawfully purchasing liquor

A person must not purchase liquor or take liquor for other consideration from another person except as provided in the Act, the Liquor Distribution Act or the regulations made under either of those Acts.

[Liquor Control and Licensing Act, section 39]

18.3.2 Designated outlets for licensee liquor purchases

In addition to government liquor stores, the Liquor Distribution Branch may specifically designate outlets where licensees may purchase liquor. Currently, designated outlets include the following:

- rural agency liquor stores
- on-site agency stores at licensed wineries, breweries and distilleries
- independent wine stores, and
- Brewers' Distributors Ltd.

[Liquor Control and Licensing Branch Policy]

18.3.4 Elements of the contravention of unlawfully purchasing liquor

To allege the contravention of unlawfully purchasing liquor, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee purchased liquor or took liquor for other consideration, and
- the purchase or taking of liquor was not lawful.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 39; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee has unlawfully purchased liquor, the inspector may:
 - organize an illicit liquor inspection in accordance with the policies and procedures outlined in the Illicit Liquor Field Manual, and / or
 - gather evidence of the contravention during the course of a regular inspection.
2. The inspector will gather evidence of each element of the contravention identified in policy 18.3.3 above. The inspector may:
 - interview staff
 - interview the licensee
 - obtain the liquor register and compare the register with the liquor stock
 - obtain bank statements, purchase receipts or other documentation that may indicate where the liquor was purchased
 - record CPC or SKU codes on products
 - seize liquor
 - take liquor samples for purposes of testing and analysis, and / or
 - obtain records from LDB detailing liquor purchases for the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee purchased liquor or took liquor for other consideration	brand and type of liquor amount of liquor the location of the liquor purchase receipts, bank statements or other documentation
The purchase or taking of liquor was not lawful	LDB sales data CPC or SKU codes from products whether CPC or SKU codes on products matched sales data from LDB liquor register entries features that indicate the liquor was not purchased from the LDB, e.g., unfamiliar labels, duty free labels, export labels, no labels the type and quantity of liquor results of liquor analysis

3. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for liquor purchases
 - whether the licensee had policies and procedures on liquor purchases or taking liquor from manufacturers or representatives
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 39 of the Act "Unlawfully purchasing liquor."

18.4 Failing to Maintain a Liquor Register

Policy Rationale

While it is not a contravention relating to the purchase or sale of illicit liquor, the failure to maintain a register of all liquor purchased and received under a licence may be an indicator that a licensee is purchasing or selling illicit liquor. The liquor register is a useful tool both for licensees and inspectors to reconcile the liquor in the establishment with liquor purchases made through the Liquor Distribution Branch or a designated outlet. Although inspectors may also obtain this information directly from the Liquor Distribution Branch, licensees are expected to maintain a liquor register and have it available for inspection so that inspectors are able to immediately identify any illicit liquor in an establishment.

Policy

18.4.1 Licensee must maintain a liquor register

A licensee must maintain a register of all liquor purchased and received under the licence. The liquor register can be a chronological filing of an establishment's Documentation 60s that the licensee signs and receives when picking up orders from the Liquor Distribution Branch or designated outlet. If a licensee wishes to keep this information in a book, they must record:

- the amount (number of bottles, volume of each bottle and CPC code) and brand of liquor purchases
- the date of purchase, and
- the cost.

[Liquor Control and Licensing Regulation, section 35(3); Liquor Control and Licensing Branch Policy]

18.4.2 Accounting for old liquor in the liquor register

Where a licensee is unable to produce proof of purchase for "old" liquor that was purchased or received by the establishment and is kept for decorative purposes, to mark significant events or for sale, the licensee must record in the liquor register the:

- name
- description
- approximate date of purchase, and
- any other available information regarding the product.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Branch Policy]

18.4.3 System of accounting for faulty keg replacement is part of liquor register

The licensee must record the replacement of faulty kegs and / or spoiled product in the liquor register. The system or records used to account for the replacement of these kegs by credit from a brewer's agent are considered to be part of a licensee's liquor register.

[Liquor Control and Licensing Regulation, section 35(3)]

Authority References

Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Regulation, section 35(3); Liquor Control and Licensing Branch Policy

Procedures

1. If a licensee is unable to produce an accurate and complete liquor register for the establishment, the inspector will document the evidence of the contravention, including:
 - the number of times the inspector asked to see the liquor register

- the circumstances surrounding the requests
 - any explanation provided by the licensee for the lack of a liquor register
 - the time period the licensee was given to produce the liquor register, and / or
 - a description and copies of any records produced.
2. The inspector will issue a contravention notice to the licensee alleging a contravention of section 35(3) of the regulation "Failing to maintain a liquor register."

18.5 Purchasing Liquor over the Counter

Policy Rationale

To ensure accurate records of liquor purchases, licensees must purchase liquor from authorized Liquor Distribution outlets and provide their licence number with every purchase. Accurate liquor purchase records help the branch identify illicit liquor and are used to calculate annual licence fees based on the value of a licensee's liquor purchases.

Policy

18.5.1 Prohibition against purchasing liquor over the counter

A licensee must purchase liquor for the licensed establishment only:

- from a government liquor store designated in writing by the general manager or other outlet designated by the Liquor Distribution Branch, and
- after identifying themselves as a licensee.

[Liquor Control and Licensing Regulation, section 35(1)]

18.5.2 Elements of the contravention of purchasing liquor over the counter

To allege the contravention of purchasing liquor over the counter, an inspector must gather enough evidence to prove either of the following elements on a balance of probabilities:

the licensee purchased liquor from an unauthorized source, or
the licensee purchased liquor without identifying themselves as a licensee.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 35(1); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee has purchased liquor from an unauthorized source or without identifying themselves as a licensee, the inspector will gather evidence of either element of the contravention identified in policy 18.5.2 above. The inspector may:

- obtain records from LDB detailing liquor purchases for the licensee
- obtain copies of any sales receipts
- interview staff where the liquor was purchased
- record CPC or SKU codes from products
- seize liquor
- obtain a copy of the liquor register and compare it with the liquor in stock, and / or
- interview the licensee.

Examples of the evidence that the inspector may gather for either element of the contravention are listed in the following table:

Element	Evidence
<p>The licensee purchased liquor from an unauthorized source</p> <p>or</p> <p>The licensee purchased liquor without identifying themselves as a licensee</p>	<ul style="list-style-type: none"> • brand and type of liquor • amount of liquor • sales receipts • LDB sales data • CPC or SKU codes from products • whether CPC or SKU codes on products matched sales data from LDB • description of licensee or purchase from staff where the liquor was purchased

2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for liquor purchases
 - whether the licensee had policies and procedures on over the counter liquor purchases
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 35(1) of the Act, either:
 - "Purchasing liquor other than from a designated store," or
 - "Purchasing liquor without identifying licensee."

18.6 Selling Liquor Purchased Under Another Licence

Policy Rationale

Unless authorized by the general manager, a licensee may only sell liquor that has been purchased under that establishment's licence. It is necessary to accurately account for all liquor purchased and sold under a licence because of the potential impact on liquor licence fees or other revenue related fees and taxes.

Policy

18.6.1 Prohibition against selling liquor that was purchased under another licence

A licensee must not sell or provide liquor that was purchased under another licence, unless otherwise authorized by the general manager.

[Liquor Control and Licensing Regulation, section 36]

18.6.2 Multiple establishments within the same facility and under the same ownership

A licensee who owns more than one licensed establishment within the same facility may sell liquor in one establishment that has been purchased under the licence of another establishment within the facility, so long as neither establishment is a licensee retail store. For example, a licensee who owns a hotel with both a liquor-primary and food-primary licence may purchase liquor for both establishments under the liquor-primary licence.

[Liquor Control and Licensing Branch Policy]

18.6.3 Elements of the contravention of selling liquor purchased under another licence

To allege the contravention of selling liquor purchased under another licence, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee sold or provided liquor, and
- the liquor was purchased under another licence.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 36; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee has sold liquor that was purchased under another licence, the inspector will gather evidence of each element of the contravention identified in policy 18.6.3 above. The inspector may:
 - interview staff
 - interview the licensee
 - obtain the liquor register and compare the register with the liquor stock
 - obtain bank statements, purchase receipts or other documentation that may indicate which licence purchased the liquor
 - record CPC or SKU codes from liquor products
 - seize liquor, and / or
 - obtain records from LDB detailing liquor purchases for the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee sold or provided liquor	<ul style="list-style-type: none"> • brand and type of liquor • amount of liquor • the location of the liquor in the establishment • sales receipts • whether patrons were served or consumed the liquor
The liquor was purchased under another licence	<ul style="list-style-type: none"> • LDB sales data • CPC or SKU codes from products • whether CPC or SKU codes on products matched sales data from LDB • liquor register entries • purchase receipts, bank statements or other documentation that may indicate which licence purchased the liquor

2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for liquor purchases
 - whether the licensee had policies and procedures on selling liquor purchased under another licence
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 36 of the regulation "Selling liquor purchased under another licence."

SECTION 19: LIQUOR SERVICE

19.0 Introduction

Items 22 through 30 of the penalty schedule outline a number of contraventions to do with liquor service. Laws and policies regarding liquor service are directed at preventing over-service and intoxication, maintaining the support of communities and avoiding disturbances.

Policies and procedures for these contraventions are outlined in this section under the following headings:

Revised
June
2007

- • Failing to Complete the Training Program
- Failing to Clear Patrons
- Failing to Clear Liquor
- Allowing a Person to Consume Liquor More than Half an Hour after Liquor Service Ends
- Licensee or Employee Consuming Liquor
- Permitting Consumption of Liquor not Purchased from the Licensee
- Permitting Removal of Liquor, and
- Liquor Pricing.

Revised
June
2007

19.1 Failing to Complete the Training Program

Revised
June
2007

Policy Rationale

Serving It Right: The Responsible Beverage Service Program is a correspondence course that educates licensees, managers and servers about their legal responsibilities when serving liquor. It provides effective techniques to prevent problems related to over-service, service to minors and service to intoxicated patrons.

Policy

19.1.1 Licensee must complete training program

Subject to policy 19.1.4 below, the program must be completed by:

Revised
June
2007

- all licensees and managers of liquor primary, liquor primary club, food primary and licensee retail store establishments, and
- all licensees and managers of winery and brewer's establishments with sampling rooms and wineries with endorsements, and
- all special occasion licensees and managers.

If the licensee is a private or public corporation, the program must be completed by a director, inspector or employee of the corporation responsible for controlling the sale of liquor.

[Liquor Control and Licensing Act, sections 13(1), (2) and (3); Liquor Control and Licensing Regulation, section 43; Liquor Control and Licensing Branch Policy]

Revised
June
2007

19.1.2 Servers must complete training program

Subject to policy 19.1.4 below, all servers in a licensed establishment must complete the program.

[Liquor Control and Licensing Act, section 13(4); Liquor Control and Licensing Regulation, section 43]

Revised
June
2007

19.1.3 Grace period for completion of training program

[Liquor Control and Licensing Regulation, section 43(6)-REPEALED]

(There is no grace period for completion of the training program)

19.1.4 Exemption from training program

The following types of licensees, managers and servers do not need to complete the program:

- licensees and staff of a licensed aircraft
- an unpaid manager or server in a liquor-primary club
- a server in a food-primary establishment without a lounge endorsement
- an unpaid server in an establishment licensed under a special occasion licence,
- a person who obtains a private special occasion licence and is not acting on behalf of an organized group of person, and
- licensees, managers and staff of U-Brew/U-Vins

Revised
June
2007

[Liquor Control and Licensing Regulation, section 43(7); Liquor Control and Licensing Branch Policy]

19.1.5 Licensee must verify completion of the training program

A licensee must verify that a person has successfully completed the program before allowing the person to manage or serve liquor in an establishment.

Revised
June
2007

[Liquor Control and Licensing Regulation, section 43(8); Liquor Control and Licensing Branch Policy]

19.1.6 Evidence of completion of training program

A copy of a certificate of completion issued in a person's name by the program administering authority is evidence that the person successfully completed the program. A person who claims to have successfully completed the program must produce their certificate of completion upon request of the general manager, an inspector or a police officer. Licensees must keep records of employment and photocopies of certificates of completion ready for inspection at all times.

[Liquor Control and Licensing Regulation, sections 43(5) and (9); Liquor Control and Licensing Branch Policy]

19.1.7 Elements of the contravention of failing to complete the training program

To allege the contravention of failing to complete the training program, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the person failed to complete the training program, and
- the person is not exempt from completion of the training program.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 13; Liquor Control and Licensing Regulation, section 43; Liquor Control and Licensing Branch Policy.

Procedures

1. If an inspector suspects that a licensee, manager or server has not completed the training program, the inspector will ask to see the person's certificate of completion.
2. If the person or licensee is unable to produce the certificate, the inspector will gather further evidence of each element of the contravention identified in policy 19.1.7 above. The inspector may:
 - interview the person
 - interview the licensee
 - obtain employment records from the licensee and/or
 - contact the program administering authority to determine whether the person completed the program.

Revised
June
2007

Revised
June
2007

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence <i>Revised June 2007</i>
The person failed to complete the training program	<ul style="list-style-type: none"> the person's position and duties whether any other staff present in the establishment had completed the program whether the person produced a certificate of completion whether the program administering authority confirmed that the person had completed the training program
The person is not exempt from completion of the training program	<ul style="list-style-type: none"> whether the person is an unpaid manager or server in a liquor-primary club whether the person is a server in a food-primary establishment without a lounge endorsement whether the person is an unpaid server in an establishment licensed under a special occasion licence whether the person obtained a private special occasion licence and is not acting on behalf of an organized group of persons

3. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:

- the name and duties of the person who was the directing mind of the licensee responsible for hiring
- whether the licensee had written policies which required confirmation of completion of the training program before employment
- whether the manager of staff responsible for hiring confirmed that staff completion of the training program occurred prior to employment, and/or
- whether the licensee supervised or tested staff to ensure they were following this policy.

4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of either:

- section 43 of the regulation "Licensee failing to complete the training program," or
- section 43 of the regulation "Allowing a person to manage or serve without verifying completion of the training program."

19.2 Failing to Clear Patrons

Policy Rationale

The hours when a liquor-primary licensed establishment is allowed to sell liquor are determined, in part, by community standards. Patrons who remain in an establishment beyond closing may have a significant impact on surrounding residences and businesses.

Policy

19.2.1 A licensee must clear patrons within half an hour after liquor service ends

Unless otherwise authorized by the general manager, a liquor-primary or liquor-primary club licensee must ensure that patrons leave the establishment within half an hour after the licensed hours of liquor service end. In some communities, the general manager has authorized patrons to remain in the establishment up to one hour after the licensed hours of liquor service end.

[Liquor Control and Licensing Regulation, section 44(1)(a)]

19.2.2 Elements of the contravention of failing to clear patrons

To allege the contravention of failing to clear patrons, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- patrons remained in the establishment, and
- it was more than half an hour after licensed liquor service ended.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 44(1)(a); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes people in an establishment more than half an hour after licensed liquor service ended, the inspector will observe and document the activities of the people and staff.
2. If it appears that the people are patrons, the inspector will gather further evidence for each element of the contravention identified in policy 19.2.2 above. The inspector may:
 - review the hours of liquor service indicated on the licence
 - review the licence to determine whether a longer period has been allowed for clearing patrons
 - interview the patrons and obtain their names and contact information
 - interview staff, and / or
 - interview the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
Patrons remained in the establishment	<ul style="list-style-type: none"> • whether the people were patrons or staff • location of the patrons • how many patrons remained in the establishment • whether the patrons appeared to be leaving, e.g., people putting coats on • what the licensee and staff did to clear the patrons • whether the establishment appeared to be open for business • number of staff • whether liquor dispensers or cooler controls were locked • whether liquor bottles were in speed wells • whether lights were on • whether music was playing • when the licensee announced last call • how long the patrons remained in the establishment
It was more than half an hour after licensed liquor service ended	<ul style="list-style-type: none"> • time on the inspector's watch • time on any clocks in the establishment and whether the clocks appear to be working • hours of liquor service indicated on licence • whether the licence authorized a longer period of time to clear patrons

3. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - information from the licensee on why patrons remained in the establishment
 - the name and duties of the person who was the directing mind of the licensee responsible for closing and clearing patrons from the establishment
 - whether the licensee had written policies and procedures on clearing patrons
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 44(1)(a) of the regulation "Failing to clear patrons."
5. The inspector will tell the licensee to clear the patrons from the establishment.

19.3 Failing to Clear Liquor

Policy Rationale

The hours when a licensed establishment may sell liquor are determined, in part, by community standards. In particular, hours of liquor sale affect the surrounding residents and businesses in the community. If a licensee fails to take liquor from patrons in a food-primary licensed establishment, patrons may continue to consume liquor while the restaurant remains open, even though the hours of liquor service have ended. This can result in the establishment shifting its primary focus.

Policy

19.3.1 Liquor must be cleared within half an hour after liquor service ends

Food-primary licensees must ensure that liquor is taken from patrons within half an hour after the licensed hours of liquor service end, unless:

- otherwise authorized by the general manager, or
- the liquor is a bottle of wine that is unfinished by a patron and re-sealed by the licensee.

[Liquor Control and Licensing Regulation, sections 42(4)(a) and 44(1)(b)]

19.3.2 Determining whether fluid is liquor or an alcoholic beverage

To allege this contravention, an inspector does not need to prove that the contents of a glass or bottle are liquor or an alcoholic beverage. Evidence such as:

- liquor bottles containing fluid, or
- glasses containing fluid of the appropriate colour and form, e.g., amber clear liquor in a glass beside a beer bottle

support the conclusion that the licensee has failed to clear liquor within the time legally allowed. An inspector may take samples of liquor in order to support the inspector's conclusion that the fluid in question is liquor.

[Liquor Control and Licensing Branch Policy]

19.3.3 Elements of the contravention of failing to clear liquor

To allege the contravention of failing to clear liquor, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee failed to take liquor from patrons, and
- it was more than half an hour after licensed liquor service ended.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, sections 42(4)(a) and 44(1)(b); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes patrons with liquor more than half an hour after licensed liquor service ended, the inspector will observe and document the activities of patrons and staff before notifying the licensee of their concerns.

2. The inspector will gather further evidence of each element of the contravention identified in policy 19.3.3 above. The inspector may:
- examine products to determine if they are liquor
 - review the terms and conditions of the licence
 - interview staff
 - interview the licensee
 - obtain sales receipts
 - seize liquor samples for testing and analysis, and / or
 - interview patrons and obtain names and contact information.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee failed to take liquor from patrons	<ul style="list-style-type: none"> • location of the patrons • how many patrons had liquor • the type, brand and amount of liquor • colour and smell of fluid • the volume of liquor remaining in bottles and glasses, e.g., half full • whether the kitchen was operating • the number of staff • what the licensee and staff did to remove the liquor • when the licensee announced last call • whether liquor dispensers or cooler controls were locked • whether liquor bottles were in speed wells • sales receipts
It was more than half an hour after licensed liquor service ended	<ul style="list-style-type: none"> • time on the inspector's watch • time on any clocks in the establishment and whether the clocks appear to be working • hours of liquor service indicated on licence

3. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
- information from the licensee on why patrons still had liquor
 - the name and duties of the person who was the directing mind of the licensee responsible for liquor service
 - whether the licensee has written policies and procedures on removing liquor from patrons after liquor service ends
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 44(1)(b) of the regulation "Failing to clear liquor."

19.4 Allowing a Person to Consume Liquor More than Half an Hour after Liquor Service Ends

Policy Rationale

The hours when a licensed establishment may sell liquor are determined, in part, by community standards. Patrons who consume liquor and leave an establishment after the licensed hours of liquor service may disturb nearby residents and businesses. Selling liquor after hours also leads to unfair competition with other licensed establishments.

Policy

19.4.1 A licensee must not allow a person to consume liquor more than half an hour after liquor service ends

Unless otherwise authorized by the general manager, licensees must not allow a person to consume liquor

- in the licensed establishment, or
- in an area licensed under a temporary change to a licence

more than half an hour after the hours of liquor service indicated on the licence or change approval end.

[Liquor Control and Licensing Regulation, section 44(3); Liquor Control and Licensing Branch Policy]

19.4.2 Liquor service hours on New Year's Eve

Licensees may serve liquor until 4:00 am on January 1, unless prohibited by local government bylaws or the general manager has directed otherwise, so long as food is available to patrons.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Branch Policy]

19.4.3 Effect of time changes on liquor service hours

On the night of a time change (i.e., the first Sunday in April and the last Sunday in October) licensees must operate according to the hours in effect at the start of the Saturday business day and wait to change their clocks until after liquor service has ended for that business day.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Branch Policy]

19.4.4 Determining whether fluid is liquor or an alcoholic beverage

To allege this contravention, an inspector does not need to prove that the contents of a glass or bottle are liquor or an alcoholic beverage. Evidence such as:

- liquor bottles containing fluid, or
- glasses containing fluid of the appropriate colour and form, e.g., amber clear liquor in a glass beside a beer bottle

support the conclusion that the licensee is allowing patrons to consume liquor beyond the time legally allowed. An inspector may take samples of liquor in order to support the inspector's conclusion that the fluid in question is liquor.

[Liquor Control and Licensing Branch Policy]

19.4.5 Elements of the contravention of allowing a person to consume liquor more than half an hour after liquor service ends

To allege the contravention of allowing a person to consume liquor more than half an hour after liquor service ends, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- patrons were consuming liquor, and
- it was more than half an hour after licensed liquor service ended.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Regulation, section 44(3); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes patrons consuming liquor more than half an hour after licensed liquor service ended, the inspector will observe and document the activities of patrons and staff.
2. The inspector will gather further evidence of each element of the contravention identified in policy 19.4.5 above. The inspector may:
 - attempt to purchase liquor
 - examine products to determine if they are liquor
 - review the terms and conditions of the licence
 - interview staff
 - interview the licensee
 - obtain sales receipts
 - seize liquor samples for testing and analysis, and / or
 - interview patrons and obtain names and contact information.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
Patrons were consuming liquor	<ul style="list-style-type: none"> • whether patrons were purchasing liquor • whether patrons were consuming liquor • location of the patrons • how many glasses and bottles are on tables • how many patrons are purchasing or consuming liquor • the type, brand and amount of liquor • colour and smell of fluid • the volume of liquor remaining in bottles and glasses, e.g., half full • how many staff were on duty • what the licensee and staff did to clear liquor • when the licensee announced last call • whether liquor dispensers or cooler controls were locked • whether liquor bottles were in speed wells • whether patrons were consuming food or non-alcoholic drinks • whether the inspector was able to purchase liquor • sales receipts

Element	Evidence
It was more than half an hour after licensed liquor service ended	<ul style="list-style-type: none"> time on the inspector's watch time on any clocks in the establishment and whether the clocks appear to be working hours of liquor service indicated on licence

- The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for liquor service
 - whether the licensee has written policies and procedures on clearing liquor after liquor service ends
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
- Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 44(3) of the regulation "Allowing a person to consume liquor more than half an hour after liquor service ends."

19.5 Licensee or Employee Consuming Liquor

Policy Rationale

The licensee must manage and control the behaviour of patrons to ensure the safety of staff, patrons and the community. When the licensee and staff drink liquor while working, their judgment and ability to manage and control the establishment are impaired. This creates a public safety risk for other staff, patrons and the community.

Policy

19.5.1 Licensees and employees must not consume liquor while working

The licensee and employees of the licensee must not consume liquor in the licensed establishment:

- while working, or
- during their lunch or other breaks, including breaks taken between shifts on the same day.

The licensee and employees may consume liquor in the licensed establishment when they are not working if they are treated as regular patrons of the licensed establishment.

[Liquor Control and Licensing Regulation, section 42(3); Liquor Control and Licensing Branch Policy]

19.5.2 Entertainers must not consume liquor while working

Entertainers in live stage performances must not consume liquor:

- during a performance
- in the establishment between performances, or
- while on stage in view of patrons.

[Liquor Control and Licensing Regulation, section 42(3); Liquor Control and Licensing Branch Policy]

19.5.3 Elements of the contravention of licensee or employee consuming liquor

To allege the contravention of licensee or employee consuming liquor, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee or employee was consuming liquor in the establishment, and
- the licensee or employee was working.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 42(3); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects a licensee or employee is consuming liquor while working, the inspector will observe and document the activities of the licensee or employee and other staff.
2. The inspector will gather further evidence of each element of the contravention identified in policy 19.5.3 above. The inspector may:
 - examine products to determine if they are liquor
 - interview staff
 - interview the licensee
 - interview the employee
 - obtain payroll records or work schedules
 - obtain a copy of the person's job description or employment contract to determine whether the person is an employee or a contractor, and / or
 - seize liquor samples for testing and analysis.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee or employee was consuming liquor in the establishment	<ul style="list-style-type: none"> • location of the licensee or employee • the type, brand and amount of liquor • colour and smell of fluid • whether the licensee or employee had the odour of liquor on their breath • indicators of intoxication • the name and duties of the person who poured the liquor for the licensee or employee • whether the licensee or employee was openly consuming liquor • whether other staff observed the licensee or employee consuming liquor • the names and duties of employees consuming liquor • the name of the licensee who was consuming liquor • whether the consumption of liquor was adversely affecting the management of the establishment • how many patrons were in the establishment

Element	Evidence
The licensee or employee was working	<ul style="list-style-type: none"> • shift schedules or payroll records • duties performed by the licensee or employee while they were consuming liquor • whether the licensee or employee was on a break or between shifts

3. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for liquor service
 - whether the licensee has written policies and procedures on consuming liquor while working
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 42(3) of the regulation "Employee or licensee consuming liquor while working."
5. If the inspector feels that the licensee cannot maintain control of the establishment because of their own consumption or the consumption of liquor by employees, the inspector may:
 - attempt to have the licensee obtain a responsible staff member to relieve them
 - encourage the licensee to clear the patrons and close the establishment, or
 - contact the police.

19.6 Permitting Consumption of Liquor not Purchased from the Licensee

Policy Rationale

Customers may not bring in their own bottles of liquor to consume in an establishment. This rule is part of the larger regulatory scheme that, among other things, requires a licensee to purchase liquor from the Liquor Distribution Branch and have those sales recorded on their licence. As with that rule, the purpose of prohibiting the consumption of liquor not purchased in the establishment is to ensure the quality of liquor and prevent over-consumption in licensed establishments. Over-consumption of liquor has an impact on public safety and community standards, and may impair the ability of the licensee to manage and control the establishment.

Policy

19.6.1 Prohibition against permitting consumption of liquor not purchased or served by licensee

A licensee must not allow people in the establishment to consume liquor that was not purchased from, or served by, the licensee.

[Liquor Control and Licensing Regulation, section 42(2)]

19.6.2 Elements of the contravention of permitting consumption of liquor not purchased from the licensee

To allege the contravention of permitting consumption of liquor not purchased from the licensee, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee knew or ought to have known that the person was consuming liquor, and
- the liquor had not been purchased from, or served by, the licensee.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 42(2); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes a person consuming liquor that does not appear to have been purchased or served in the establishment, the inspector will observe and document the activities of the person and staff before notifying the licensee of their concerns.
2. The inspector will gather further evidence of each element of the contravention identified in policy 19.6.2 above. The inspector may:
 - examine products to determine if they are liquor
 - interview staff
 - interview the licensee
 - interview the person
 - record CPC or SKU codes from the products
 - contact Liquor Distribution Branch to obtain purchase records for the establishment
 - seize the liquor
 - try to determine the origin or source of the liquor, and / or
 - obtain sales receipts.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee knew or ought to have known that the person was consuming liquor	<ul style="list-style-type: none"> • location of the person • the type, brand and amount of liquor • colour and smell of fluid • indicators of intoxication • whether the person was openly consuming the liquor • whether staff observed the person consuming liquor • whether staff have knowledge of, or can account for, the liquor • whether the licensee had experienced door staff on duty • whether there were uncontrolled exits or entrances • lighting • how many patrons were consuming outside liquor

Element	Evidence
The liquor had not been purchased from, or served by, the licensee	<ul style="list-style-type: none"> • liquor register • LDB sales data • CPC or SKU codes from products • whether CPC or SKU codes on products matched sales data from LDB • factors indicating that the liquor was not purchased from the establishment, e.g., wine bottle in a bag under the table • sales receipt for the patron

3. In addition to the evidence gathered to determine whether or not the licensee "permitted" the contravention outlined in procedure 2 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for supervision of patrons
 - whether the licensee has written policies and procedures on patrons bringing in and consuming outside liquor
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 42(2) of the regulation "Permitting consumption of liquor not purchased from the licensee."

19.7 Permitting Removal of Liquor

Policy Rationale

To ensure that the licensee is able to monitor the consumption of liquor sold in the establishment, the situations in which patrons may take liquor outside of the establishment or the red-lined area are restricted. In order to minimize the risk of tampering with unattended drinks, patrons are permitted to take drinks into washrooms, so long as licensees have procedures in place to supervise activities occurring there.

Policy

19.7.1 Prohibition against permitting removal of liquor from the establishment

A licensee must not allow liquor sold or served in a licensed establishment to be taken from the establishment, other than:

- an unfinished bottle of wine that is sealed by the licensee, or
- liquor that is sold for consumption off premises in accordance with the Act, regulation and terms and conditions of the licence.

[Liquor Control and Licensing Regulation, section 42(4)]

19.7.2 Prohibition against permitting removal of liquor from the red-lined area

A licensee must not permit patrons to consume liquor outside of the red-lined area or to take liquor from the red-lined area into other parts of the establishment, unless the patron is taking liquor into a washroom that is adjacent to the red-lined area and:

- the patron does not walk through an unlicensed area (such as a hotel lobby) to do so, and
- the licensee has policies in place to supervise activities in the washroom.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Branch Policy]

19.7.3 Elements of the contravention of permitting removal of liquor

To allege the contravention of permitting removal of liquor, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the person removed from the establishment liquor that was sold or served by the licensee
- the licensee knew or ought to have known that the person removed the liquor from the establishment, and
- the removal was not authorized by the Act, regulation or terms and conditions of the licence.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Regulation, section 42(4); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes a person removing liquor from the establishment or with liquor outside the establishment, the inspector will observe and document the activities of the person and staff before notifying the licensee of their concerns.
2. The inspector will gather further evidence of each element of the contravention identified in policy 19.7.3 above. The inspector may:
 - review the terms and conditions of the licence
 - examine products to determine if they are liquor
 - interview staff
 - interview the licensee
 - interview the person who allegedly removed the liquor
 - interview other patrons who may have witnessed the liquor being removed, and / or
 - obtain sales receipts.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The person removed from the establishment liquor that was sold or served by the licensee	<ul style="list-style-type: none">• red-lined area indicated on the licence• where the person was• whether staff served the person• the type, brand and amount of liquor• sales receipt

Element	Evidence
The licensee knew or ought to have known that the person removed the liquor from the establishment	<ul style="list-style-type: none"> • whether the licensee had experienced door staff on duty • whether there were uncontrolled exits or entrances • lighting • how many staff were on duty • how busy the establishment was • what the licensee or staff did to prevent the person removing liquor • how many people were removing liquor • factors suggesting liquor would not be consumed in establishment, e.g., person placed liquor in a paper bag or in a backpack • whether red-lined area is visibly distinct from rest of establishment
The removal was not authorized by the Act, regulation or terms and conditions of the licence	<ul style="list-style-type: none"> • terms and conditions of the licence regarding off-premises sales • how the off-premises sale contravened the terms and condition of the licence, e.g., sale after 11 pm

3. In addition to the evidence gathered to determine whether or not the licensee "permitted" the contravention outlined in procedure 2 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - whether the licensee had signs in place directing patrons not to remove liquor
 - the name and duties of the person who was the directing mind of the licensee responsible for supervision of patrons
 - whether the licensee has written policies and procedures on patrons removing liquor
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 42(4) of the regulation "Permitting removal of liquor."

19.8 Liquor Pricing

Policy Rationale

Control of liquor prices is directed at preventing over-service, over-consumption and loss of control within a licensed establishment. In general, the price of liquor must not be so low that it is likely to lead to over-consumption. The purpose of these policies is to prevent destructive competition and its spillover effects. These concepts are explained in Section 2 Operating Environment.

Policy

19.8.1 Prohibition against providing unlimited or unspecified quantities of liquor for a single price

A licensee must not provide unlimited or unspecified quantities of liquor for a single price. Licensees may offer an all-inclusive package that includes liquor in the price but the amount of liquor provided must be specified and not unlimited. Licensees may not pour drinks directly into the mouths of patrons laying or leaning over a bar.

[Liquor Control and Licensing Regulation, section 41(2); Liquor Control and Licensing Branch Policy]

19.8.2 Prohibition against using a sales strategy that is likely to promote or encourage intoxication

A licensee must not use a sales strategy that is likely to promote or encourage intoxication. Prohibited sales strategies include:

- selling drinks "two for one"
- cheap drink or free drink nights, or
- serving drinks that are larger than the maximum drink sizes.

Maximum drink sizes per person are:

- three ounces of distilled liquor
- one-half litre of draught beer, or 1.5 litres of draught beer in a pitcher shared by two or more people
- two standard sized bottles or one large sized bottle of beer, or
- one-quarter litre of wine, or more if the person is having a meal.

[Liquor Control and Licensing Regulation, section 41(2); Liquor Control and Licensing Branch Policy]

19.8.3 Prohibition against changing liquor prices during the day

A licensee must set liquor prices at the start of each business day and must not alter prices until the start of the next day. Licensees may not offer liquor at a reduced price, either during a "happy hour" or at any other time during their business day. A licensee may occasionally treat customers to a free drink but may not give away multiple drinks that may cause over-consumption.

[Liquor Control and Licensing Regulation, sections 41(1) and (2); Liquor Control and Licensing Branch Policy]

19.8.4 Advertising and promoting liquor prices

A licensee must have a price list available to customers showing the quantities in which liquor is sold and the price at which each quantity is sold. A licensee must not advertise or promote in a way that:

- suggests patrons may be provided free liquor
- suggests patrons may be provided unlimited or unspecified quantities of liquor for a single price
- suggests patrons may be provided liquor priced at less than the Liquor Distribution Branch purchase price
- suggests that the price of liquor will be altered during the day, e.g., happy hours, or
- uses a sales strategy that promotes or encourages intoxication, e.g., two for one specials.

[Liquor Control and Licensing Regulation, section 41(3); Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 41; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee has committed a contravention relating to liquor pricing, the inspector will gather evidence of the identified contravention. The inspector may:

- attempt to purchase a drink
- document their own observations
- interview the licensee
- interview staff
- interview patrons
- obtain sales receipts from the licensee
- count the number of patrons in the establishment and compare the number of patrons to the volume of liquor sales, and / or
- obtain copies of any advertisements or menus.

Examples of the evidence that the inspector may gather for each contravention are listed in the following table:

Contravention	Evidence
The licensee provided unlimited or unspecified quantities of liquor for a single price	<ul style="list-style-type: none"> • advertising or menus • details of the incident, e.g., bartender pouring liquor into patron's mouth, unlimited champagne on New Year's Eve • whether a list was available for patrons showing prices and quantities of liquor for sale • type of liquor provided • quantity of liquor provided • price of liquor provided • sales receipts • names and duties of staff involved • how many patrons were involved
The licensee used a sales strategy that is likely to promote or encourage intoxication	<ul style="list-style-type: none"> • advertising or menus • price, quantities and type of liquor • details of the sales strategy, e.g., two for one specials, pre-mixed shooter trays, exceeding drink sizes • whether patrons became intoxicated as a result of the sales strategy and any evidence of intoxication • names and duties of staff involved • how many patrons were involved • sales receipts • whether the amount of liquor sold per person would be likely to promote intoxication
The licensee changed the price of liquor during the day	<ul style="list-style-type: none"> • advertising or menus • details of the price change, e.g., happy hour special, multiple free drinks • type of liquor or drinks that had price changed • price at the beginning of the day • price after the change • when the price was changed • name and duties of staff member who changed the price • sales receipts • how many patrons were involved

2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for liquor pricing
 - whether the licensee has written policies and procedures on liquor pricing
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of:
 - section 41(2) of the regulation "Providing unlimited or unspecified quantities of liquor for a single price"
 - section 41(2) of the regulation "Using a sales strategy that is likely to promote or encourage intoxication," or
 - section 41(2) of the regulation "Altering the price of liquor during the day."

SECTION: 20 PRODUCTION OF RECORDS

20.0 Introduction

Under item 31 of the penalty schedule, a licensee who refuses to produce a document, record or thing, or allow liquor sampling, commits a contravention. Policies and procedures for identifying this contravention are outlined in this section under the heading:

Failing to Produce a Document, Record, Thing or Sample.

20.1 Failing to Produce a Document, Record, Thing or Sample

Policy Rationale

Authorities under the Act and procedures for requesting production of documents, records and things and taking liquor samples are outlined in sections 7.3 Seizing Liquor and Taking Samples and 7.4 Obtaining Documents, Records and Things. The failure to produce documents and records and the refusal to allow liquor sampling are serious contraventions that undermine the Compliance and Enforcement Program. Without access to documents, records and things associated with the operation of the establishment, the branch may be unable to identify serious contraventions, such as the sale of illicit liquor, and deal with them effectively.

Policy

20.1.1 Prohibition against failing to produce documents, records, things or samples of liquor

A person commits an offence if the person neglects or refuses to produce and submit:

- a document that the general manager has required to be produced
- a record or thing for inspection, or
- a sample of liquor.

[Liquor Control and Licensing Act, 73(2)(a) and (b)]

Elements of the contravention of failing to produce a document, record, thing or sample

To allege the contravention of failing to produce a document, record, thing or sample, an inspector must gather enough evidence to prove on a balance of probabilities that:

- the general manager had the authority to request the item, and
- the licensee refused or neglected to produce the requested item.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 73(2)(a) and (b); Liquor Control and Licensing Branch Policy

Procedures

1. If a licensee refuses or neglects to produce a document, record or thing or allow liquor sampling, the inspector will gather evidence of the contravention, including:
 - description of the item requested
 - the relevance of the document, record, thing or liquor sample
 - how many times the inspector requested the item
 - the circumstances surrounding the requests
 - any explanation provided by the licensee for failing to produce the requested item
 - copies of any written requests
 - the time period the licensee was given to produce the item, and / or
 - a description and copies of any items produced.
2. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of either:
 - section 73(2)(a) of the Act "Failing to produce a document," or
 - section 73(2)(b) of the Act "Failing to produce a record, thing or liquor sample."

SECTION 21: ADVERTISING

21.0 Introduction

The penalty schedule outlines two contraventions under the heading of "Advertising:" one for unauthorized signs and the other for unauthorized advertising. While the Act treats each as distinct subjects, the Guides for Liquor Licensees make it clear that signs are advertising and must comply with the requirements that apply to all other forms of advertising. Therefore, policies and procedures for the two contraventions are combined in this section under the heading:

- Unauthorized Advertising.

There are specific advertising rules that apply to UBrew and UVin establishments. Those rules are outlined in Section 26 UBrews and UVins.

21.1 Unauthorized Advertising

Policy Rationale

Branch policy with regard to signs and other forms of advertising is primarily directed at public safety concerns associated with advertising that targets minors or promotes irresponsible drinking behaviour. To ensure that members of the public are aware that adult entertainment may be occurring before entering a licensed establishment, licensees must post signs informing the public of the nature of the entertainment.

Policy

21.1.1 Definition of advertise

Advertise means to exhibit or display, or permit to be exhibited or displayed, a notice respecting liquor:

- by an electric, illuminated or other sign, contrivance or device, or
- on a building, signboard, billboard, vehicle or other place in public view.

Advertise means to publish, broadcast, distribute or display a sign, notice, circular, letter, poster, handbill, card, price list or information in any format that:

- names, represents, describes or refers to liquor, or to the qualities or quantities of liquor,
- gives the name or address of a person manufacturing or dealing in liquor, or
- states or indicates where liquor may be obtained or purchased.

[Liquor Control and Licensing Act, section 1(1)]

21.1.2 Content of advertisements

Unless otherwise restricted by the terms and conditions of a licence, licensee advertisements may specify:

- the kind, type or class of liquor available for sale
- particular liquor brands and manufacturers
- licensed establishments and liquor stores where a particular product is available for sale
- hours of sale
- entertainment or food featured at the establishment, and
- liquor prices.

Advertisements must comply with the Code for Broadcast Advertising of Alcoholic Beverages published by the CRTC. Advertisements must not:

- encourage people to drink liquor or drink irresponsibly
- show a person drinking liquor
- show a person with liquor but without food
- show a person who is intoxicated, behaving irresponsibly or behaving illegally
- associate liquor with driving
- use pictures of minors or personalities, images or activities that may appeal to minors
- be directed at minors or placed in locations used or visited mostly by minors
- depict liquor as one of life's necessities, key to social acceptance or personal success, central to the enjoyment of an activity or a status symbol
- promote contests and tournaments involving wet t-shirts or wet jockey shorts, bare-as-you-dare or similar themes or activities
- refer to liquor products that are not listed or approved for sale by the Liquor Distribution Branch, or
- depict packaging or labelling that has not been approved under the Liquor Distribution Act.

[Liquor Control and Licensing Act, section 51.1(1); Liquor Control and Licensing Regulation, section 57; Liquor Control and Licensing Branch Policy]

21.1.3 Licensee retail store names

A licensee retail store advertisement may refer to the establishment as a "licensed liquor store," "private liquor store" or "licensed retail liquor store." Licensee retail store advertisements may not use the terms "BC liquor store," "government liquor store" or just "liquor store."

[Liquor Control and Licensing Act, section 51.1(1); Liquor Control and Licensing Regulation, section 57; Liquor Control and Licensing Branch Policy]

21.1.4 Signs

All indoor and outdoor signs must be approved by the general manager and must comply with local government bylaws.

[Liquor Control and Licensing Act, section 49(3)]

21.1.5 Licensee must post sign informing the public of adult entertainment

A licensed establishment that offers adult entertainment must post, at the entrance to the establishment, a sign to inform the public of the nature of the entertainment.

[Liquor Control and Licensing Act, section 49(4)]

21.1.6 Elements of the contravention of unauthorized advertising or signs

To allege the contravention of unauthorized advertising or signs, an inspector must gather enough evidence to prove on a balance of probabilities that:

- the advertising or sign does not comply with the Act, regulation or terms and conditions of the licence.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 1(1), 49(3) and (4) and 51.1(1); Liquor Control and Licensing Regulation, section 57; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes advertising or signs that do not comply with the Act, regulation or terms and conditions of the licence, the inspector will gather evidence of the contravention. The inspector may :
 - review the terms and conditions of the licence
 - interview staff
 - interview the licensee
 - obtain a copy of the advertisement
 - take a photograph or draw a sketch of the sign
 - contact the Liquor Distribution Branch to determine whether advertised liquor products, packaging or labelling are approved, and / or
 - review the Code for Broadcast Advertising of Alcoholic Beverages.

Examples of the evidence that the inspector may gather include:

- nature of the advertisement, e.g., television, radio, newspaper ad
 - where the signs or advertisement are located
 - when the sign or advertisement appeared
 - copy of the advertisement
 - photograph or sketch of the sign
 - description of the advertisement or sign
 - details of how the sign or advertisement contravened the Act, regulation or terms and conditions of the licence, e.g., advertisement featured people drinking liquor, sign was not approved by the general manager
 - relevant excerpts from the Code for Broadcast Advertising of Alcoholic Beverages, and / or
 - information from LDB regarding approved products, packaging or labelling.
2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - whether the licensee was aware of, or had approved, the advertising
 - the name and duties of the person who was the directing mind of the licensee responsible for advertising
 - whether the licensee has written policies and procedures on advertising
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
 3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of either:
 - section 49 of the Act "Unauthorized display of signs," or
 - section 51.1 of the Act and section 57 of the regulation "Unauthorized advertising."
 4. Where the advertising is present in one or more corporate chain or franchise establishments, the inspector will send a letter to the corporate head office outlining the problem with the advertising and requesting that a notice be sent out to all establishments requesting that it be removed.

SECTION 22: ENTERTAINMENT

22.0 Introduction

The penalty schedule outlines minimum penalty levels for two contraventions under the heading of "Entertainment:"

- permitting entertainment by one or more exotic dancers that is prohibited or restricted, and
- permitting any other entertainment that is prohibited or restricted.

Minimum penalties for contraventions involving exotic dancers are higher than those involving other forms of entertainment. However, because their elements are similar, policies and procedures for identifying both contraventions are combined in this section under the heading:

- Permitting Prohibited or Restricted Entertainment.

22.1 Permitting Prohibited or Restricted Entertainment

Policy Rationale

The licensee is responsible for managing and controlling the behaviour of patrons and ensuring the safety of staff, patrons and the community. Entertainment is a factor that may affect the licensee's ability to maintain effective management and control of the establishment. If the entertainment uses part of the licensed area, overcrowding may impact the ability of staff to observe and control patron conduct. As a result, the branch authorizes the size and location of performance areas. An exotic performance may present safety concerns for staff, performers and patrons. As a result, the branch prohibits certain types of performances such as simulated sex acts or acts with animals.

Entertainment in an establishment may also generate noise, nuisance and other negative impacts on nearby residents and businesses. To ensure minors are not exposed to adult entertainment, performances by exotic dancers and other adult-oriented entertainers are prohibited in establishments frequented by minors. The general manager has imposed restrictions on the types of games and entertainment available in food-primary establishments to maintain the primary focus on the service of food.

Policy

22.1.1 Licensees may only provide entertainment that is authorized by the general manager

Licensees may only provide games and entertainment that are authorized by the general manager. The general manager may impose terms and conditions on a licence that approve, prohibit, restrict or limit any type or form of game or entertainment in a licensed establishment.

[Liquor Control and Licensing Act, sections 12(2), 12(3) and 50(2); Liquor Control and Licensing Regulation, section 46(1)]

22.1.2 Local government or First Nation may restrict or prohibit entertainment

A local government or First Nation may restrict or prohibit any type of entertainment or games allowed in a licensed establishment.

[Liquor Control and Licensing Act, section 50(1); Liquor Control and Licensing Regulation, section 46(3)]

22.1.3 Entertainment must not jeopardize patron or public safety

A licensee must not offer or condone entertainment or games that may jeopardize patron or public safety.

[Liquor Control and Licensing Regulation, section 46(4)]

22.1.4 Entertainment permitted in liquor-primary establishments

Unless otherwise restricted by the general manager, the following types of games and entertainment are permitted in liquor-primary establishments:

- live or recorded music
- radio or television
- movies, so long as the primary focus of the establishment does not shift to that of a movie theatre and all movies are shown in accordance with the Motion Picture Act and regulations
- dancing
- adult-oriented presentations
- games of skill and games of chance so long as they do not offer a payoff or prize
- contests and tournaments, so long as:
 - there is no entry fee for contests
 - any tournament fees are donated to a recognized charity
 - everyone who enters the establishment is entitled to enter the contest
 - patrons may enter the contest without buying a drink
 - liquor is not a prize
 - winners do not need to be present to collect a prize
 - the event does not involve consumption of liquor, and
 - the event does not involve physical contact between patrons.

Liquor-primary licensees may offer contact sports events with the approval of the general manager so long as the sports do not involve patrons and the licensee takes steps to protect both patrons and staff.

[Liquor Control and Licensing Act, sections 12 and 50(2); Liquor Control and Licensing Branch Policy]

22.1.5 Entertainment permitted in food-primary establishments

Entertainment and games provided in a food-primary establishment must not result in the operation of the establishment in a manner that is contrary to its primary purpose. The following types of games and entertainment are permitted in food-primary establishments, unless restricted by the general manager:

- television, movies, recorded music, and live radio broadcasts. Movies must be appropriate for all age groups.
- computers that offer internet access, card games, board games, and games such as cribbage, and
- games of chance, including card games, which do not involve payoffs or prizes of any kind.

The following types of games and entertainment are prohibited in food-primary establishments:

- games that require the patron to get up from the food service area and which are likely to shift the primary focus of the establishment away from the service of food, e.g., darts, shuffleboard, foosball, billiards, pool, video arcade style games, basketball, ice or roller hockey, curling and bowling
- performances by exotic dancers, and
- other adult-oriented performances.

[Liquor Control and Licensing Act, sections 12 and 50(2); Liquor Control and Licensing Regulation, section 46(2); Liquor Control and Licensing Branch Policy]

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22.1.6 Entertainment permitted in food-primary establishments by endorsement on the licence

The general manager may approve dine and dance and other forms of patron participation entertainment as an endorsement to a food-primary licence. Patron participation entertainment must end by 12:00 midnight, unless the general manager has approved longer entertainment hours.

The general manager may approve stage entertainment and other forms of patron non-participation entertainment as an endorsement to a food-primary licence. Patron non-participation entertainment must end by 1:00 am, unless the general manager has approved longer entertainment hours.

[Liquor Control and Licensing Act, sections 12 and 50(2); Liquor Control and Licensing Branch Policy]

22.1.7 Factors that may indicate entertainment is affecting order in the establishment

Entertainment must not adversely affect order in the establishment. Factors that may indicate that the order in the establishment is being adversely affected include:

- the noise level
- the general atmosphere, e.g., chaotic
- whether patrons remain in their seats
- whether patrons crowd around the performance area in a manner that impairs the ability of staff to observe and control patron conduct, and / or
- the nature of the entertainment, i.e., whether it seeks to provoke a response from the audience or encourage participation in any form that affects the ability of the licensee to control the establishment.

[Liquor Control and Licensing Branch Policy]

22.1.8 Definition of exotic dancer and adult-oriented performer

An exotic dancer and/or adult-oriented performer is an entertainer who removes clothing during a performance and/or performs adult dramatic, artistic or other types of adult-oriented activities. Dancers known as "belly dancers" are not considered exotic dancers.

[Liquor Control and Licensing Branch Policy]

22.1.9 Audience participation in performances by strippers, exotic dancers or other adult-oriented performers

The audience must not participate in performances by strippers, exotic dancers or other adult-oriented performers. Exotic dancers and other adult-oriented performers must not:

- touch audience members
- touch or share food or beverages with audience members, or
- pass objects to audience members.

Tipping and the distribution of promotional material are permitted provided there is no physical contact between the performers and each other or with an audience member.

[Liquor Control and Licensing Act, sections 12 and 50; Liquor Control and Licensing Branch Policy]

22.1.10 Terms and conditions of performances by exotic dancers and other adult-oriented performers

Exotic dancers and other adult-oriented performers must confine their performance to the areas approved by the general manager. They must not perform for a customer at a table or in the audience seating area.

Performers may not act as servers or hold any other employment position in an establishment while working in their role as entertainers. However, when individuals are not working in their role as an

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entertainer they may be employed as servers or hold other positions of employment in an establishment, and this may occur during the same shift.

If an entertainer holds another employment position in the establishment they must change out of their entertainer clothing and into clothing typical for the position they are tasked with prior to starting that position. Servers must be clothed and exotic dancing/adult entertainment must not be combined with serving or any other employment position.

Minors may not be employed as exotic dancers or adult-oriented performers.

In any performance by an exotic dancer or other adult-oriented performer, there must be no:

- deliberate engagement of patrons to participate in an adult-oriented performance
- live, realistic or simulated sex acts
- animals, reptiles or birds as part of a performance
- insertion or extraction of any object into or from the vagina or anus
- urination or defecation
- acts involving simulated or real coercion or violence
- dancing or performing on table tops beyond the area approved by the general manager for a performance
- touching between exotic dancers, and
- touching or sharing food or beverages between exotic dancers.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Branch Policy]

22.1.11 Elements of the contravention of permitting prohibited or restricted entertainment

To allege the contravention of permitting prohibited or restricted entertainment, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- entertainment was occurring that was prohibited or restricted, and
- the licensee knew or ought to have known that the prohibited or restricted entertainment was occurring. [Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 12 and 50; Liquor Control and Licensing Regulation, section 46; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes entertainment in a licensed establishment that may be prohibited or restricted, the inspector will observe and document the activities of the entertainers, patrons and staff before notifying the licensee of their concerns.
2. The inspector will gather further evidence of each element of the contravention identified in policy 22.1.11 above. The inspector may:
 - review the terms and conditions of the licence
 - contact the local government to determine whether the entertainment is restricted by bylaw
 - interview the entertainers and obtain names and contact information
 - interview staff
 - interview the licensee, and / or
 - obtain copies of any advertisements for the entertainment.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
Entertainment was occurring that was prohibited or restricted	<ul style="list-style-type: none"> • terms and conditions of the licence • local government bylaws • details of the entertainment • how many entertainers were involved • how many patrons were involved • how the entertainment contravened the Act, regulation, terms and conditions of the licence or local government bylaws, e.g., simulated sex acts by exotic dancer, pool table in a food-primary establishment
The licensee knew or ought to have known that the prohibited or restricted entertainment was occurring	<ul style="list-style-type: none"> • whether the licensee or staff were aware of the entertainment • where the entertainment was occurring • how the entertainment affected order in the establishment, e.g., patrons were crowding the stage

3. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for entertainment and supervision of the establishment
 - whether the licensee has written policies and procedures about entertainment
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 50 of the Act, either:
 - "Permitting prohibited or restricted entertainment by an exotic dancer," or
 - "Permitting prohibited or restricted entertainment."

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SECTION 23: LICENSING CONTRAVENTIONS

23.0 Introduction

Licensing contraventions are outlined in items 36 to 39 of the penalty schedule and include those contraventions where a licensee fails to disclose information relevant to the licensing decision or makes changes to the licensed owners or licensed area without the approval of the general manager. While, in many cases, the investigation of licensing contraventions will involve the participation of the licensing division of the branch, inspectors and investigators are responsible for ensuring compliance with and enforcement of the licensing related provisions of the Act and regulations whenever they suspect a contravention. Policies and procedures for these contraventions are outlined in this section under the headings:

- Failing to Disclose Material Facts or Making False or Misleading Statements
- Failing to Disclose Information Relating to Tied Houses
- Transferring Shares without Approval, and
- Making Structural Changes without Permission.

23.1 Failing to Disclose Material Facts or Making False or Misleading Statements

Policy Rationale

The ability of the general manager to supervise the conduct and operation of licensed establishments depends to a large extent on the honesty, integrity and dependability of the applicant or licensee personally. The failure to disclose information required as part of the licensing process may call into question whether the applicant or licensee is a fit and proper person to hold a liquor licence.

Policy

23.1.1 Prohibition against false or misleading statements or failing to disclose material facts

A person applying for the issue, renewal, transfer or amendment of a licence must:

- disclose all material facts required by the application, and
- not make a false or misleading statement in the application.

[Liquor Control and Licensing Act, section 15(2)]

23.1.2 Definition of material fact

For the purposes of this policy, material fact includes whether the applicant or licensee:

- holds, or has previously held, an interest in a liquor licence
- has a relationship with any liquor manufacturer or agent
- has ever been charged with, or convicted of, a criminal offence
- has a valid interest in the establishment property at the time of application, and
- intends to allow a third party to use the licence.

[Liquor Control and Licensing Branch Policy]

23.1.3 Elements of the contravention of making a false or misleading statement or failing to disclose a material fact

To allege the contravention of making a false or misleading statement or failing to disclose a material fact, an inspector must gather enough evidence to prove on a balance of probabilities either that:

- the licensee made a false or misleading statement in their application, or
- the licensee failed to disclose a material fact in their application.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 15(2); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector discovers that a licensee may have made a false or misleading statement or failed to disclose a material fact in their application, the inspector will refer the information to a branch investigator.
2. The investigator will gather evidence of either element of the contravention identified in policy 23.1.3 above. The investigator may:
 - review the application form
 - contact headquarters licensing division for further information on the application
 - access databases such as CPIC, POSSE, Land Titles Office for further information relating to the statement or material fact
 - interview a manufacturer or the manufacturer's agent
 - interview the licensee
 - interview the owner of the property
 - interview a third party using the licence, and / or
 - ask the licensee to produce documents relating to the statement or material fact.

Examples of the evidence that the investigator may gather for either element of the contravention are listed in the following table:

Element	Evidence
The licensee made a false or misleading statement in their application or The licensee failed to disclose a material fact in their application	<ul style="list-style-type: none"> • application form • nature of the false or misleading statement or material fact • details of the licensee's interest in other liquor licences • details of any previous criminal convictions • details of any relationship with a manufacturer or manufacturer's agent • details of any arrangements for third party use of the licence • details of the licensee's interest in the property

3. Based on the evidence gathered, if the investigator forms the opinion that a contravention occurred, the investigator will issue a contravention notice to the licensee alleging a contravention of section 15(2) of the Act, either:
 - "Making a false or misleading statement in application," or
 - "Failing to disclose a material fact in application."

23.2 Failing to Disclose Information Relating to Tied Houses

Policy Rationale

The Act prohibits a licensee from having a relationship with a liquor manufacturer such that the licensee may be inclined to promote the liquor of that particular manufacturer. The rationale for the restrictions against "tied houses" is that such relationships encourage monopolization, discourage the entry of new manufacturers into the market, restrict consumer choice and result in pressure on licensees to encourage consumption.

Policy

23.2.1 Prohibition against relationships between manufacturers and other licensees

Subject to policy 23.2.2 below, the general manager will not issue, renew or transfer a licence, other than a manufacturer's or agent's licence to:

- an applicant or licensee who has agreed or arranged to sell the liquor of a manufacturer to the exclusion of the liquor of another manufacturer, or
- a liquor manufacturer or the manufacturer's agent, or a person who is so associated with, connected with or financially interested in them, that they are likely to promote the sale of liquor for that manufacturer or person.

[Liquor Control and Licensing Act, section 18(1)]

23.2.2 Exemption from prohibition against relationships between manufacturers and other licensees

The prohibitions outlined in policy 23.2.1 above do not apply to:

- a person who operates a brew pub and a licensed establishment operated in conjunction with, and at the same site as, the brew pub, with respect to liquor manufactured on the premises, or
- a winery and a licensed establishment operated in conjunction with, and at the same site as, the winery, with respect to liquor manufactured on the premises.

[Liquor Control and Licensing Act, section 18(3)]

23.2.3 Prohibition against relationships between UBrew/UVin licensees and other licensees

The general manager will not issue, renew or transfer:

- a UBrew or UVin licence to a person who holds, or is associated with, connected with or financially interested in a person who holds another type of liquor licence
- another type of liquor licence to a person who either holds, or is associated with, connected with or financially interested in a person who holds a UBrew or UVin licence

unless the relationship existed before April 1, 2000 and has not expanded since that date.

[Liquor Control and Licensing Act, sections 18(1.1), (1.2) and (1.3)]

23.2.4 Applicants and licensees must disclose information relating to tied houses

If any of the relationships referred to in policies 23.2.1 and 23.2.3 apply to a person applying for a licence or holding a licence under the Act, the applicant or licensee must promptly disclose the condition to the general manager even if the prohibition does not apply to that licensee.

[Liquor Control and Licensing Act, sections 18(2) and (2.1)]

23.2.5 Elements of the contravention of failing to disclose information relating to tied houses

To allege the contravention of failing to disclose information relating to tied houses, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee was involved in a prohibited relationship, and
- the licensee failed to disclose the relationship to the branch.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 18; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector discovers that a licensee may have failed to disclose information relating to a tied house relationship, the inspector will refer the information to a branch investigator.
2. The investigator will gather evidence of each element of the contravention identified in policy 23.2.5 above. The investigator may:
 - review the licensee's application form and other licence application forms
 - contact headquarters licensing division for further information on applications
 - interview other licensees, manufacturers or agents
 - access databases such as the corporate registry or Land Title Office to obtain information on ownership of property or registered companies
 - contact Vital Statistics Agency for information on family relationships
 - interview the licensee, and / or
 - ask the licensee to produce documents relating to the relationship.

Examples of the evidence that the investigator may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee is involved in a prohibited relationship	<ul style="list-style-type: none"> • name and licence number of the manufacturer, agent or licensee with whom the licensee has a prohibited relationship • details of the prohibited relationship • whether the licensee has promoted, or is likely to promote, a particular brand of liquor
The licensee failed to disclose the relationship to the branch	<ul style="list-style-type: none"> • application forms • details of any other correspondence between the licensee and the branch regarding the tied house relationship

3. Based on the evidence gathered, if the investigator forms the opinion that a contravention occurred, the investigator will issue a contravention notice to the licensee alleging a contravention of section 18 of the Act, "Failing to disclose information relating to tied houses."

23.3 Transferring Shares without Approval

Policy Rationale

The licensee is responsible for all matters respecting a liquor licence. Therefore, situations involving new owners or new shareholders require the general manager to assess the suitability of these individuals, just as was done at the time of the original application. A transfer of shares without approval may result in an establishment being operated by a person who is not fit and proper to hold a liquor licence.

Policy

23.3.1 Prohibition against transferring shares without general manager's approval

A private corporation that holds a licence must receive the approval of the general manager before completing a transfer of shares of its capital stock, either externally to new shareholders or internally between current shareholders.

[Liquor Control and Licensing Act, sections 19(2) and 19(3); Liquor Control and Licensing Branch Policy]

23.3.2 Elements of the contravention of transferring shares without approval

To allege the contravention of transferring shares without approval, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee completed a transfer of shares, and
- the licensee didn't receive approval for the transfer.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 19; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector discovers that a licensee may have transferred shares without approval, the inspector will refer the information to a branch investigator.
2. The investigator will gather evidence of each element of the contravention identified in policy 23.3.2 above. The investigator may:
 - inspect the establishment
 - review the licensee's application form and any applications for permanent changes to the licence
 - review the licence
 - contact headquarters licensing division for further information on applications
 - access databases such as the corporate registry to obtain information on ownership of registered companies
 - interview the licensee, and / or
 - ask the licensee to produce documentation relating to ownership of the corporation, including meeting minutes, resolutions, Register of Members or Register of Directors and Executive Inspectors.

Examples of the evidence that the investigator may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee completed a transfer of shares	<ul style="list-style-type: none"> • documentation indicating a transfer of shares • number of shares transferred • names of shareholders involved in the transfer • whether the transfer is an internal or external transfer of shares • date of the share transfer • changes to the percentage interest in the business resulting from the share transfer • whether the transfer of shares has resulted in a change in management of the establishment
The licensee didn't receive approval for the transfer	<ul style="list-style-type: none"> • application forms • details of any other correspondence between the licensee and the branch regarding the transfer of shares

3. Based on the evidence gathered, if the investigator forms the opinion that a contravention occurred, the investigator will issue a contravention notice to the licensee alleging a contravention of section 19(3) of the Act, "Transferring shares without approval."

23.4 Making Structural Changes without Permission

Policy Rationale

The physical characteristics of an establishment affect the ability of licensees and their staff to manage areas licensed for the sale and consumption of liquor. Specifically, problems of over-service, over-consumption, and loss of control within a licensed establishment are related, in part, to the extent to which the physical dimensions and layout of the establishment help or hinder staff in effectively managing the licensed area. Enlargements or other changes to the floor plan may significantly affect the conduct and operation of the establishment as a whole and, therefore, require prior approval of the general manager.

Policy

23.4.1 Prohibition against making structural changes without permission

Except for UBrews and UVins, a licensee must not:

- structurally alter any area of a licensed establishment, or
- change the size of any area of a licensed establishment

without the written authorization of the general manager.

[Liquor Control and Licensing Regulation, section 7]

23.4.2 Definition of structural change

A structural change is a change to existing construction resulting in a change to the free space within a licensed area, including:

- a change in the position of a wall, floor or ceiling surrounding a licensed area
- a change in position, addition or removal of fixed articles such as planters, partial height divider walls, columns, pillars, ornamental displays, food and liquor service bars, stages and dance floors
- a change in the position of access and exit points leading to or from a licensed area, including any opening through which liquor is intended to pass
- the addition of a lounge area in a food-primary establishment
- a change to permitted fencing surrounding an outdoor patio, and
- such other construction or changes the general manager considers may affect patron routing, capacity, or the line of sight between a staff control point and the licensed area of the establishment.

[Liquor Control and Licensing Branch Policy]

23.4.3 Recommending enforcement action

An inspector will generally not recommend enforcement action against a licensee who makes structural changes without permission. The branch will not renew the licence until the structural changes have been approved.

[Liquor Control and Licensing Branch Policy]

23.4.4 Elements of the contravention of making structural changes without permission

To allege the contravention of making structural changes without permission, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee made a structural change, and
- the licensee didn't receive permission for the change.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 7; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee has made structural changes without permission, the inspector will gather evidence of each element of the contravention identified in policy 23.4.4 above. The inspector may:
 - inspect the establishment
 - review the licensee's application form and any applications for permanent changes to the licence
 - review the licence and the official floor plan
 - contact headquarters licensing division for further information on applications
 - review the field establishment file for photographs of the premises taken at the time of licensing
 - photograph or sketch the structural changes, and / or
 - interview the licensee.

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Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee made a structural change	<ul style="list-style-type: none"> • photographs or drawings of the structural change • description of the structural change • how the structural change affected sight lines or management and control of the establishment
The licensee didn't receive permission for the change	<ul style="list-style-type: none"> • application forms • details of any other correspondence between the licensee and the branch regarding the structural change

2. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 7 of the regulation "Making structural changes without permission."
3. The inspector will schedule a compliance meeting with the licensee. At the compliance meeting, the inspector will advise the licensee that if the licensee does not submit the appropriate forms to the branch to receive approval of the structural change within a specified time period, the licence will not be renewed.
4. The inspector will send the licensee a letter confirming that the licence will not be renewed if the licensee does not submit the appropriate forms to the branch within the specified time period. The inspector will send a copy of the letter to compliance and enforcement headquarters.
5. Compliance and enforcement headquarters will indicate in POSSE that the licence should not be renewed.
6. Once the structural change is approved, the inspector will advise compliance and enforcement headquarters. Compliance and enforcement headquarters will indicate in POSSE that the licence can now be renewed.

SECTION 24: INDUCEMENTS

24.0 Introduction

Inducements are incentives given to licensees by manufacturers or their representatives in free liquor product, rebates, cash or other consideration, in order to establish exclusivity of product sales or to increase a product's sales. Giving or accepting inducements for promoting liquor is a serious contravention that incurs the highest minimum penalty ranges included in schedule 4.

To avoid the possibility and appearance of inducement activity, the branch has developed a number of terms and conditions that govern promotional activity between licensees and manufacturers and agents. Breaching these terms and conditions is a less serious contravention that falls within the general contravention provision included as item 46 of the schedule. Policies and procedures for identifying both contraventions are outlined in this section under the headings:

- Giving or Accepting Inducements, and
- Engaging in Unauthorized Promotional Activity.

24.1 Giving or Accepting Inducements

Policy Rationale

Giving or accepting inducements for promoting a particular brand or manufacturer of liquor is a serious contravention that can lead to destructive competition and its spillover effects. These concepts are described in Section 2 Operating Environment.

Policy

24.1.1 Prohibition against giving or accepting gifts for promoting liquor

Unless exempted by the general manager, a person must not:

- offer, give, demand, accept or receive, or
- agree to offer, give, accept or receive

money, gifts, reward or remuneration, directly or indirectly, for promoting, inducing or furthering the sale of a particular kind, class or brand of liquor.

[Liquor Control and Licensing Act, sections 45(1) and 45(4); Liquor Control and Licensing Regulation, section 50.1(2)]

24.1.2 Elements of the contravention of giving, demanding or accepting inducements

To allege the contravention of giving, demanding or accepting inducements, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee, manufacturer or agent gave, demanded or accepted money, gifts or reward, and
- the money, gifts or reward were given, demanded or accepted for promoting liquor.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 45; Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee, manufacturer or agent has given, demanded or accepted an inducement, the inspector will gather evidence of each element of the contravention identified in policy 24.1.2 above. The inspector may:
 - review the terms and conditions of the licence
 - interview staff
 - interview the licensee
 - interview the manufacturer or agent
 - obtain the liquor register and LDB purchase data and compare with the liquor stock
 - seize liquor given as an inducement
 - obtain copies of bank statements or other documents that may assist in tracing cash inducements
 - obtain copies of any buy-sell agreements
 - obtain licensee sales data, and / or
 - photograph items given as inducements.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee, manufacturer or agent gave, demanded or accepted money, gifts or reward	<ul style="list-style-type: none"> • the name of the licensee, manufacturer and / or agent • photographs or descriptions of any items given as inducements • descriptions of any services given as inducements • type, brand and amount of liquor given as inducements
Money, gifts or reward were given, demanded or accepted for promoting liquor	<ul style="list-style-type: none"> • type and brand of liquor being promoted • whether licensee sales data indicates higher than normal sales of the liquor • details of how the sale of liquor was promoted, e.g., drink specials, tasting event

2. The inspector will gather evidence that indicates whether the licensee, manufacturer and / or agent were duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for relations with manufacturers and agents
 - whether the licensee has written policies and procedures about inducements
 - whether staff had been trained on these policies and procedures, and
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee, manufacturer and / or agent alleging a contravention of section 45 of the Act "Giving, demanding or accepting inducements."

24.2 Engaging in Unauthorized Promotional Activity

Policy Rationale

Promotional activities by manufacturers and agents are restricted by regulation and policy to ensure that inducement activities do not occur and a selection of liquor brands are available to the public. Policies surrounding conduct of tasting events guard against over-consumption. Promotional items for licensees are restricted to items of little value so that it does not appear that a manufacturer is inducing a licensee to carry or highlight the manufacturer's products.

Policy

24.2.1 Prohibition against promoting the sale of a particular kind of liquor

Unless exempted by the general manager, a licensee or the licensee's employee must not induce, further or promote the sale of a particular kind, class or brand of liquor. This prohibition does not apply with respect to liquor sold at a winery, brew pub, distillery or brewery or at an establishment operated on the same site as a winery or brew pub with respect to liquor manufactured on the premises.

[Liquor Control and Licensing Act, sections 45(2), (3) and (4)]

24.2.2 Terms and conditions of exemptions

If the general manager has granted an exemption from policy 24.2.1, the trade practices terms and conditions form part of the terms and conditions of the licence of the liquor manufacturer, agent or licensee to whom an exemption the granted. Any promotional activity undertaken in reliance on the exemption must be consistent with the trade practices terms and conditions and any other terms and conditions imposed on the licence.

[Liquor Control and Licensing Regulation, sections 50.1(3)(a) and (b)]

24.2.3 Terms and conditions of exemptions given to stadiums or concert halls

If the general manager has granted an exemption from policy 24.2.1 to a licensee that arranges with a manufacturer or agent to sell a designated category of liquor in a stadium or concert hall, the following terms and conditions apply to the licence:

- the licensee must make available to patrons at least one other product that:
 - belongs to that category
 - is reasonably priced
 - is not connected with, or manufactured by, that manufacturer or agent
 - is made known to patrons in a manner satisfactory to the general manager, and
 - is available from a reasonable number of take-away bars throughout the stadium or concert hall
- the licensee must ensure that at least 10 percent of the sales of the designated category of liquor are sales of this other product
- the licensee must display messaging that is satisfactory to the general manager to promote the responsible consumption of liquor, and
- any other terms and conditions the general manager considers advisable.

[Liquor Control and Licensing Regulation, sections 50(3) and (4)]

24.2.4 Prohibition against accepting items or services from a manufacturer or agent

Licensees may purchase items from manufacturers and agents at fair market value. A licensee must not accept from a manufacturer or agent any items, products or services that are necessary for the operation of the licensed business, including:

- money
- credit or other forms of financial assistance
- fixtures
- furnishings
- liquor products other than product samples
- repair and maintenance costs
- draught lines
- glassware, other than disposable glassware in stadiums
- games
- refrigerators
- shelving, or
- permanent display structures.

Licensees must also not accept from manufacturers or agents:

- advertising or advertising costs
- entertainment or entertainment costs other than inexpensive forms of entertainment during theme nights, or
- rental costs for unoccupied rooms.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.5 Promotional items

A manufacturer or agent may loan a licensee promotional items with the manufacturer's name or brand such as:

- signs
- patio umbrellas
- ceramic draught beer towers
- mirrors
- menu boards, or
- temporary display structures.

A licensee may accept promotional clothing items with a manufacturer's name or brand, so long as the items are given free to customers. Licensees may purchase promotional items such as shirts, caps or key chains displaying a manufacturer's name or brand at fair market value from a manufacturer or agent for re-sale to customers or staff.

A licensee may also accept promotional items of a nominal value from manufacturers or agents, such as:

- tent cards
- posters
- coasters
- product brochures

- ceiling danglers
- shelf talkers, or
- other similar brand or corporately identified items

so long as their menu already lists the brand of liquor identified in the promotional items and it does not appear that the licensee is promoting a particular liquor product or the products of a particular manufacturer. This means that brand identified or corporately identified items of a particular manufacturer must not predominate.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.6 Value-added promotional items

A manufacturer or agent may provide value-added promotional items to a licensee retail store and the following terms and conditions apply:

- the manufacturer or agent has received approval from the Liquor Distribution Branch to offer the same items in government liquor stores
- the licensee must keep a copy of the approval letter from the Liquor Distribution Branch on site
- the promotion must meet the guidelines set out in the Liquor Distribution Branch publication, The Beverage Alcohol Promotions Program for B.C. Liquor Stores
- the value of items may not exceed 20 % of the retail price of the base product
- the items must be liquor, liquor-related or branded
- the items may include third party coupons but the coupons must not be for a rebate or reduction on the price of liquor, free liquor or cash
- leftover items may be sold by the licensee after the promotional period is over
- items are not transferable to other licensees or establishments, and
- the manufacturer, agent or licensee may advertise the promotion.

A manufacturer or agent may provide a licensee retail store with value-added promotional items that are not being supplied to government liquor stores if the items do not contain liquor.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.7 Ideas or information

A licensee may request or receive information and ideas from a liquor manufacturer that will enable the licensee to improve their premises or operating methods. However, the information must be directly supplied by the manufacturer and not through an outside consultant. A licensee may not request or receive advice from a manufacturer or agent about borrowing money or locating financing.

[Liquor Control and Licensing Act, section 12; Liquor Control and Licensing Branch Policy]

24.2.8 Product samples

As a way of introducing new liquor products, a licensee may receive the following volumes of product samples from a liquor manufacturer or agent in a year:

- the smallest sized bottle of distilled spirits
- the smallest sized bottle of wine per vintage, and
- one dozen of the smallest sized bottles or cans of beer, cider and coolers.

Licenses must record all samples received in their liquor registers. Product samples are only for consumption by the licensee and their staff outside of the licensed area. The product must not be purchased or consumed by patrons of the establishment.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.9 Consumer tastings

Manufacturers and agents may conduct consumer tastings in food-primary establishments and the following terms and conditions apply:

- food must be available and the event must not shift the focus away from the service of food
- the licensee, manufacturer or agent may advertise the event outside the establishment
- the licensee may not charge the manufacturer or agent a fee for conducting the tasting
- all liquor product used in the tasting must be purchased from the licensee at no less than the price the licensee normally pays for the product and no more than the price the licensee normally charges patrons. At the end of the tasting, the licensee must refund the manufacturer or agent for the cost of any unopened product and return the product to the licensee's stock.
- the licensee must give the manufacturer or agent a countersigned receipt for the dollar value of sampled product and retain a copy of the receipt for audit purposes
- the manufacturer or agent must provide all the point-of-purchase show material used to support the consumer tasting
- the manufacturer or agent must be present for the duration of the tasting
- the licensee's staff must dispense all liquor products
- patrons may be served a maximum sample of 30 ml of wine, or 45 ml if more than one wine is featured
- patrons may be served a maximum sample of 30 ml of beer, cider or cooler, or 45 ml if more than one product is featured
- patrons may be served a maximum sample of 10 ml of spirits, or 20 ml if more than one spirit is featured
- the licensee must not leave open containers of liquor unattended, and
- the licensee must not serve drinks by the tray load.

Manufacturers and agents may conduct consumer tastings of products available for sale in licensee retail stores and the following terms and conditions apply:

- the licensee, manufacturer or agent may advertise the event
- the licensee may not charge the manufacturer or agent a fee for the demonstration space
- the tasting must end 30 minutes before the store closes
- only one tasting event may take place at a time
- all liquor product used in the tasting must be purchased from the licensee at no less than the price the licensee normally pays for the product and no more than the price the licensee normally charges patrons
- the licensee must give the manufacturer or agent a countersigned receipt for the dollar value of sampled product and retain a copy of the receipt for audit purposes
- the manufacturer or agent must provide all the promotional materials used to support the consumer tasting
- the manufacturer or agent must serve or hire servers for the tasting
- servers must be familiar with the rules governing consumer tastings at liquor stores
- patrons may be served a maximum sample of 20 ml of wine, or 30 ml if more than one wine is featured

- patrons may be served a maximum sample of 30 ml of beer, cider or cooler, or 45 ml if more than one product is featured
- servers must not leave open containers of liquor unattended, and
- at the end of the tasting, all poured samples and opened bottles must be destroyed.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.10 Hospitality

A licensee may accept hospitality expenses not associated with an educational event from a manufacturer or agent, at a rate of up to \$1,000 per licensee location per year. The manufacturer or agent may also pay for any legitimate in-province travel costs related to the event.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.11 Joint promotions

A liquor-primary or food-primary licensee may enter into a joint promotion with a manufacturer or agent to feature a manufacturer's products during a special event such as a winemaker's or brewmaster's dinner and the following terms and conditions apply:

- the licensee, manufacturer or agent may advertise the event
- the event must include a full meal, and
- the licensee must purchase the liquor served at the event from a designated Liquor Distribution Branch outlet.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.12 Visits

When a manufacturer or agent visits a licensed establishment, they may purchase drinks for patrons and the following terms and conditions apply:

- mass treating or buying drinks for the house is not permitted
- the liquor serving provided to each customer at one time may not be greater than the normal serving size for the establishment
- the manufacturer or agent must pay the liquor bill before they leave the establishment
- drink prices must be the same as those normally charged to patrons
- the manufacturer or agent may not treat more than one table at a time, unless the tables include a bona fide sporting team or an arts or cultural club
- the licensee must give the manufacturer or agent a countersigned receipt for the dollar value of product purchased, and
- the manufacturer or agent may not bring products into the establishment for the purpose of sampling.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.13 Product vouchers

A licensee may enter into an agreement with a manufacturer or agent to honour their product certificates in a licensee retail store and the following terms and conditions apply:

- only the manufacturer or agent may distribute vouchers
- vouchers may specify a quantity of liquor that is no more than:
 - the smallest sized bottle of distilled spirits available
 - the smallest sized bottle of wine available, or
 - one dozen of the smallest sized bottles or cans of beer, cider and coolers available
- once a voucher is redeemed, the manufacturer or agent must pay the licensee the full retail price for the quantity of liquor specified on the voucher, and
- the licensee may not ask for or accept an additional redemption fee for accepting a product voucher.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.14 Contests

A manufacturer or agent may hold a contest in a licensed establishment and the following terms and conditions apply:

- if the contest is running in a government liquor store, the contest must be for the same period and with the same promotional materials on display as in the government liquor store
- if the contest is not running in a government liquor store, the contest must meet the guidelines set out in the Liquor Distribution Branch publication, The Beverage Alcohol Promotions Program for B.C. Liquor Stores
- the manufacturer or agent must conduct the contest, install promotional items and remove promotional items within 10 days of the end of the contest
- the manufacturer or agent must record the name of anyone who wins a prize worth more than \$100, and
- the licensee may include contest entry forms in print advertisements and may mention where entry forms are available.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.15 Sponsorships

A manufacturer or agent may sponsor an event or activity at licensed stadiums, recreational centres, concert halls, universities or cultural centres and the following terms and conditions apply:

- the event or activity must be time limited and not part of an ongoing relationship between the manufacturer or agent and the licensee
- the audience or participants in the event or activity must not be primarily minors
- the manufacturer or agent must notify the branch before the event or activity takes place
- both the licensee and the manufacturer may advertise the event or activity, and
- if signs are displayed by the manufacturer or agent during an activity or event that offers the sale or service of liquor, the manufacturer or agent must also display a reasonable number of signs intended to promote the responsible consumption of liquor.

A manufacturer or agent may sponsor an event or organization, such as a sports team, that is associated with a licensed establishment and the following terms and conditions apply:

- the licensee and their staff may participate in the event or organization
- the participants in the event or organization must not be primarily minors, and
- the organization's activities or the event must take place outside the licensed establishment

[Liquor Control and Licensing Act, section 54; Liquor Control and Licensing Branch Regulation, section 60; Liquor Control and Licensing Branch Policy]

24.2.16 Educational events and activities

A licensee may attend an educational event or activity conducted by a manufacturer or agent and the following terms and conditions apply:

- the manufacturer or agent may pay the licensee for legitimate expenses associated with attendance at the event or activity up to a maximum of \$1,000 per year per licensee location, and
- where the licensee owns multiple licensed establishments, the manufacturer or agent may pay expenses of up to \$1,000 per person to a maximum of \$3,000 per year for attendance at events or activities by head office staff.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.17 Theme nights

A liquor-primary licensee may collaborate with a manufacturer or agent to promote the sale of a particular kind of liquor at a theme night and the following terms and conditions apply:

- theme nights are not allowed on university or college campuses
- food must be available to patrons for the duration of the theme night
- the theme night must have an educational component
- liquor prices must be the normal prices charged to patrons
- the manufacturer or agent must purchase any samples provided from the licensee
- samples must be offered by the manufacturer or agent and not the licensee's staff
- the licensee's staff may dispense samples from the bar unless a special service area is set up for the event. In that case, the manufacturer or agent must dispense samples.
- samples must be served individually and not by the tray load
- patrons may be served a maximum sample of 30 ml of wine, or 45 ml if more than one wine is featured
- patrons may be served a maximum sample of 30 ml of beer, cider or cooler, or 45 ml if more than one product is featured
- patrons may be served a maximum sample of 10 ml of spirits, or 20 ml if more than one spirit is featured
- the licensee must give the manufacturer or agent a countersigned receipt for the dollar value of the total amount of liquor and / or food purchased
- the manufacturer or agent may provide inexpensive forms of entertainment, such as games, but must not pay for more expensive forms of entertainment, such as live performers or DJ's, unless approved by the general manager
- festive activities, such as games or prizes, may be included
- the manufacturer or agent must record the name of anyone who wins a prize worth more than \$100
- unless the general manager directs otherwise, prizes may display a manufacturer's brand or name
- prizes may not be liquor or drinks containing liquor
- patrons must not be required to buy or drink liquor in order to participate in a contest

- the licensee, employees and immediate family members are not eligible to enter or win a contest
- the manufacturer or agent must not pay a fee to conduct the theme night but may pay the licensee a gratuity that is no more than 15% of the total liquor and / or food purchased and a corkage fee
- the licensee may offer special theme night prices on featured liquor products so long as the price is not lower than the price paid to the Liquor Distribution Branch and does not encourage over-consumption
- the manufacturer or agent must not subsidize the price of liquor products
- the licensee, manufacturer or agent may advertise the theme night, and
- the manufacturer or agent may provide promotional clothing items for the licensee's staff to wear.

[Liquor Control and Licensing Act, sections 12 and 45(4); Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy]

24.2.18 Elements of the contravention of engaging in unauthorized promotional activity

To allege the contravention of engaging in unauthorized promotional activity, an inspector must gather enough evidence to prove on a balance of probabilities that:

- the licensee, manufacturer and / or agent engaged in promotional activity that was not authorized by the terms and conditions of the licence.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 12, 45 and 54; Liquor Control and Licensing Regulation, sections 50, 50.1 and 60; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee, manufacturer or agent is engaging in unauthorized promotional activity, the inspector will observe and document the activities of the licensee, manufacturer, agent and staff.
2. The inspector will gather evidence of each element of the contravention identified in policy 24.2.18 above. The inspector may:
 - review the terms and conditions of the licence
 - interview staff
 - interview the licensee
 - interview the manufacturer or agent, and / or
 - obtain copies of any buy-sell agreements.

Examples of the evidence that the inspector may gather are listed in the following table:

Element	Evidence
The licensee, manufacturer and / or agent engaged in promotional activity that was not authorized by the terms and conditions of the licence	<ul style="list-style-type: none"> • the name of the licensee, manufacturer and / or agent • details of how the promotional activity contravened the terms and conditions of the licence

3. The inspector will gather evidence that indicates whether the licensee, manufacturer and / or agent were duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for relations with manufacturers and agents
 - whether the licensee has written policies and procedures about promotional activities
 - whether staff had been trained on these policies and procedures, and
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee, manufacturer and / or agent alleging a contravention of section 50.1(3)(b) of the regulation "Engaging in unauthorized promotional activity."

SECTION 25: PROMOTIONAL ACTIVITY

25.0 Introduction

The policies outlined in Section 24 Inducements outline the types of promotional activities that a licensee may engage in without contravening the inducement provisions of the Act. Some of these activities must be documented in an appropriate buy-sell agreement. A buy-sell agreement is a contract between a licensee and a liquor manufacturer or agent. It spells out what types of promotional activities the parties have agreed to and how long the agreement is to remain in place. Minimum penalties for engaging in promotional activity without documenting it in a buy-sell agreement are outlined under item 40.1 of the penalty schedule. This section outlines policies and procedures for identifying this contravention under the heading:

Engaging in Promotional Activity without a Buy-sell Agreement.

25.1 Engaging in Promotional Activity without a Buy-sell Agreement

Policy Rationale

A buy-sell agreement ensures that a manufacturer or agent does not unduly influence a licensee to stock or sell their products. The agreement ensures that the manufacturer or agent markets their products directly to the customer and that the customer, rather than the licensee, benefits from the manufacturer's or agent's promotions.

Policy

25.1.1 Promotional activities that must be documented in a buy-sell agreement

The following promotional activities must be documented in a buy-sell agreement:

- a manufacturer or agent sponsoring an activity or event held at a licensed sports stadium, recreational centre, concert hall, university or cultural centre
- a manufacturer or agent sponsoring a licensee-associated sports team, tournament or event held off-site at an unlicensed venue
- a manufacturer or agent running a value-added promotion in a licensee retail store that is not also being run in a government liquor store
- a manufacturer or agent loaning a licensee promotional items of more than nominal value
- a manufacturer or agent giving a licensee promotional clothing to give away to customers
- a licensee attending an educational event or activity hosted by a manufacturer or agent, other than very short on-site presentations
- a licensee accepting hospitality from a manufacturer or agent that is not associated with an educational activity or event and is worth more than \$25
- a licensee conducting a contest with a manufacturer or agent that is not also running in government liquor stores
- a liquor-primary licensee holding a theme night with a manufacturer or agent, and
- a liquor-primary or food-primary licensee holding a joint promotion with a manufacturer or agent.

[Liquor Control and Licensing Regulation, sections 50.1(2)(b) and (3)(d); Liquor Control and Licensing Branch Policy]

25.1.2 Contents of a buy-sell agreement

A buy-sell agreement must not:

- exclude, restrict or otherwise prohibit a licensee from carrying or selling the products of a competitor of a manufacturer or agent, or
- exceed a maximum term of 36 months.

A buy-sell agreement must include:

- manufacturer or agent name and licence number
- licensee name and licence number
- start and end dates of the agreement, and
- the terms of the agreement, including the type, number and retail value of any promotional activities or items conducted or supplied by the manufacturer or agent.

A buy-sell agreement must be signed by the manufacturer or agent or a member of their staff and by the licensee, manager or other person in charge of the licensed establishment.

[Liquor Control and Licensing Branch Regulation, sections 50.1(2)(b) and (3)(d) and (e); Liquor Control and Licensing Branch Policy]

25.1.3 Buy-sell agreement must be produced immediately upon request

A licensee, manufacturer or agent who has entered into a buy-sell agreement must present a copy of the agreement to an inspector immediately upon request.

[Liquor Control and Licensing Branch Regulation, sections 50.1(3)(f) and (g)]

25.1.4 Elements of the contravention of engaging in promotional activity without a buy-sell agreement

To allege the contravention of engaging in promotional activity without a buy-sell agreement, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee, manufacturer or agent was engaging in promotional activity that must be documented in a buy-sell agreement, and
- the activity was not documented in an appropriate buy-sell agreement.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 50.1; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee, manufacturer or agent is engaging in promotional activity that is not documented in a buy-sell agreement, the inspector will observe and document the details of the promotional activity.
2. The inspector will gather further evidence of each element of the contravention identified in policy 25.1.4 above. The inspector may:
 - obtain a copy of a buy-sell agreement from the licensee, manufacturer or agent
 - interview the licensee
 - interview the licensee's staff
 - interview the manufacturer or agent
 - interview other licensees who are engaging in similar promotions with the manufacturer or agent
 - take photographs of any promotional items
 - seize liquor used in the promotion, and / or

- obtain copies of any advertisements.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee, manufacturer or agent was engaging in promotional activity that must be documented in a buy-sell agreement	<ul style="list-style-type: none"> • type and brand of liquor being promoted • details of the promotional activity including dates, times, number of people involved, type of activity • names of the licensee, staff, manufacturer or agent involved
The activity was not documented in an appropriate buy-sell agreement	<ul style="list-style-type: none"> • whether the licensee and the manufacturer or agent have a buy-sell agreement in place • copy of the buy-sell agreement • whether the buy-sell agreement meets branch policy with respect to content, form and term • whether the licensee, manufacturer or agent produced a buy-sell agreement immediately upon request

3. The inspector will gather evidence that indicates whether the licensee and manufacturer or agent were duly diligent in preventing the contravention, for example:
 - the number of licensees that the manufacturer or agent was engaging in promotional activity without an appropriate buy-sell agreement
 - the name and duties of the person who was the directing mind of the licensee responsible for promotional activities
 - whether the licensee has written policies and procedures about promotional activities
 - whether staff had been trained on these policies and procedures, and
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to both the licensee and the manufacturer or agent alleging a contravention of section 50.1(3)(d) of the regulation "Engaging in promotional activity without a buy-sell agreement."

SECTION 26: UBREWS AND UVINS

26.0 Introduction

UBrew and UVin establishments are retail outlets that provide ingredients, equipment and support for customers to make beer or wine products for their own consumption. Because of the unique nature of their operations, the penalty schedule outlines a number of contraventions specific to UBrews and UVins. There are four different types of UBrews and UVins. Each type is described in the paragraphs that follow.

Kettle brew UBrew

In this type of establishment, the customer makes the wort by adding malt, grains and hops to boiling water in a kettle. The malt may either be commercially produced or ground and boiled by the customer.

UBrew with a wort licence

These licensees have a federal wort licence that allows them to make wort for customers. The customer's only role in the production process is to pitch the yeast. Wort will spoil, so the addition of yeast must be done by the customer shortly after the wort has been prepared.

UBrew or UVin selling kits

These types of establishments sell kits that either:

- contain all the components of the wort for customers to combine and boil
- contain "wort in a bag" that the customer pours into a carboy and then adds water and pitches the yeast, or
- contain wine juice or concentrate and other ingredients that the customer pours into a carboy and then adds water and pitches the yeast.

UVin using grapes or fresh juice

Some UVins allow customers to use fresh juice rather than kits. Grapes may be crushed on site. In these establishments, the customer adds the juice and other ingredients to the carboy, adds water and pitches the yeast.

Regulations and policy with respect to the role of the customer and the responsibilities of the licensee are the same for all four types of UBrew and UVin establishments. Policy and procedures for identifying contraventions at UBrews and UVins are outlined in this section under the following headings:

- Failing to Ensure the Customer Performs the Listed Tasks
- Failing to Comply with Payment, Acknowledgment or Invoice Requirements
- Failing to Tag Carboys
- Allowing Consumption at the Establishment
- Allowing Someone other than the Customer to Bottle Product
- Failing to Ensure that the Customer Removes Product
- Allowing a Minor to Produce Product
- Prohibited Advertising
- Operating Outside of Licensed Hours
- Failing to Comply with Record-keeping and Reporting Requirements, and
- Selling Finished Product.

26.1 Failing to Ensure the Customer Performs the Listed Tasks

Policy Rationale

UBrews and UVins are not licensed as liquor manufacturers and may not manufacture product for commercial purposes. The customer must perform certain tasks to ensure that UBrew and UVin establishments do not act as manufacturers or as retail outlets.

Policy

26.1.1 Role of the customer in the production process

A licensee must ensure that the customer performs the following tasks to produce product at a UBrew or UVin:

- wine / cider / cooler kits: pouring the juice or concentrate into the fermentation vessel and adding water (if required), yeast and any other necessary ingredients
- juice barrels: adding yeast and any other necessary ingredients to the barrel
- beer in kettles: adding the necessary ingredients (e.g., hops and malt extract) to the water in the kettle, letting it cook and adding yeast
- pre-made wort under federal wort licence: adding yeast to the wort prepared by the licensee
- commercially available pre-packaged wort kits: pouring the wort into the fermentation vessel and adding water (if necessary), yeast and any other ingredients
- bottle washing and sterilizing
- removing or defacing labels
- bottling product
- labelling, corking, capping or shrink wrapping bottles, and
- removing product from the facility.

A licensee may assist a customer to perform these tasks, but each task must be primarily performed by the customer. A licensee may offer a reasonable amount of assistance to a disabled customer who is unable to perform these tasks alone.

[Liquor Control and Licensing Regulation, section 23]

26.1.2 Fortifying product

A licensee may allow customers to add distilled liquor, such as brandy or vodka, to a port or sherry product being made at the establishment provided the customer purchased the distilled liquor from the Liquor Distribution Branch. A licensee must not provide distilled liquor to a customer. The customer must not leave the distilled liquor on-site for the licensee or staff to add to the port or sherry.

[Liquor Control and Licensing Act, section 12.1(3); Liquor Control and Licensing Branch Policy]

26.1.3 Topping up

A customer may top up their own product with product made previously at a UVin or commercially produced wine. A licensee may not add product to a wine barrel or customer's carboys to "top-up" the barrel or carboys. A licensee may top up a customer's product with water or another non-alcoholic substance.

[Liquor Control and Licensing Act, section 12.1(3); Liquor Control and Licensing Branch Policy]

26.1.4 Group batches

If a group of people is splitting a single batch or making more than one batch, each member of the group must:

- be involved in adding the ingredients required to start the batch
- sign a declaration, and
- have their names stated on the invoice.

At least one member of the group must bottle the product.

[Liquor Control and Licensing Act, section 12.1(3); Liquor Control and Licensing Branch Policy]

26.1.5 Elements of the contravention of failing to ensure the customer performs the required tasks

To allege the contravention of failing to ensure the customer performs the required tasks, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the customer did not primarily perform any of the listed tasks, and
- the customer was able to perform the tasks alone.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 12.1(3); Liquor Control and Licensing Regulation, section 23;
Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee has performed any of the customer's tasks, the inspector will observe and document the activities of staff and customers before alerting the licensee to their concerns.
2. The inspector will gather further evidence of each element of the contravention identified in policy 26.1.5 above. The inspector may:
 - pose as a customer during an inspection of the establishment
 - interview the licensee
 - interview staff
 - interview customers
 - photograph the premises or product
 - seize liquor, and / or
 - obtain a copy of the licensee's appointment book.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The customer did not primarily perform any of the listed tasks	<ul style="list-style-type: none"> the name and duties of the licensee or staff who were performing customer tasks details of the customer tasks that the licensee or staff were performing whether customers were pitching yeast whether customers were bottling and removing product how many staff were on duty whether the number of staff on duty was consistent with an establishment where customers are performing the required tasks number of wine or beer kits in inventory whether the inventory of wine or beer kits was consistent with an establishment where customers are performing the required tasks whether carboys are untagged whether the same customer name is used on a large number of carboys how much bottled product was stored on the premises whether the number of appointments in the appointment book were consistent with the number of carboys whether the size of the mixing and bottling area was consistent with an establishment where customers are performing the required tasks
The customer was able to perform the tasks alone	<ul style="list-style-type: none"> whether customers were disabled so that they could not perform the required tasks alone

- The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for operation of the establishment
 - whether the licensee has written policies and procedures about ensuring the customer performs the required tasks
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
- Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 23 of the regulation "Failing to ensure the customer performs the listed tasks."

26.2 Failing to Comply with Payment, Acknowledgment or Invoice Requirements

Policy Rationale

In order to track and account for all products being prepared at a UBrew or UVin and ensure that product is being prepared by legitimate customers, licensees must receive payment and issue invoices to all customers prior to production. To ensure that customers are aware of the fact that UBrew or UVin product may not be sold and may not be used at a special occasion licensed event, licensees must ensure that customers sign an acknowledgment prior to production.

Policy

26.2.1 Payment, acknowledgment and invoice required

A licensee must ensure that a customer does not begin producing or manufacturing their product until the customer:

- pays for the ingredients or pays for the facilities or services if the customer brings in their own ingredients, and
- signs an acknowledgment that the product is being made for the customer's own consumption or the consumption by others at no charge.

Upon payment, the licensee must provide the customer with an invoice that sets out the following information:

- the name and phone number of the customer
- the type and quantity of product to be made
- the date and the amount of payment received from the customer, and
- the name, address and phone number of the licensee.

The licensee must provide an invoice even when there is no charge for the production, such as production by an employee or the licensee or free production given to a customer who was dissatisfied with a previous batch of product.

[Liquor Control and Licensing Regulation, section 22]

26.2.2 Elements of the contravention of failing to comply with payment, acknowledgment or invoice requirements

To allege the contravention of failing to comply with payment, acknowledgment or invoice requirements, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the customer began producing or manufacturing product, and
- the customer did not pay or sign an acknowledgment and / or the licensee did not provide the customer with an invoice.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 22; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee has not issued an invoice or obtained a signed acknowledgment from the customer, the inspector will observe and document the activities of staff and customers before alerting the licensee to their concerns.

2. The inspector will gather further evidence of each element of the contravention identified in policy 26.2.2 above. The inspector may:

- pose as a customer during an inspection of the establishment
- interview the licensee
- interview staff
- interview customers
- seize liquor
- obtain copies of signed acknowledgments and invoices
- obtain copies of financial records for the establishment, and
- obtain a copy of the licensee's appointment book.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The customer began producing or manufacturing product	<ul style="list-style-type: none"> • the name of the customer • whether the customer was the licensee or a staff member • whether the customer had mixed product • whether the customer had pitched the yeast • whether the customer had bottled and removed product
The customer did not pay or sign an acknowledgment and / or the licensee did not provide the customer with an invoice	<ul style="list-style-type: none"> • whether the licensee was able to produce a signed acknowledgment • whether the licensee was able to produce an invoice • whether the customer paid for ingredients or services before beginning production • whether the production was free of charge • whether the customer was able to produce an invoice or signed acknowledgment

3. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
- the name and duties of the person who was the directing mind of the licensee responsible for operation of the establishment
 - whether the licensee has written policies and procedures about ensuring that customers sign acknowledgments and receive invoices
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 22 of the regulation, either:
- "Failing to obtain payment before production"
 - "Failing to obtain a signed acknowledgment," or
 - "Failing to provide an invoice."

26.3 Failing to Tag Carboys

Policy Rationale

To ensure that product is being produced by legitimate customers, each carboy, barrel or fermentation vessel in use at the UBrew or UVin must be tagged with the customer's name and the date any enzymes or yeast were added to the product.

Policy

26.3.1 Tagging carboys

The licensee must ensure that each carboy is properly tagged with:

- the customer's name, and
- the date any enzymes or yeast were added to the product.

Licensees and employees producing product at the establishment must label their product as belonging to the licensee or employee. If more than one customer's product is placed in a barrel for aging, the licensee must affix to the barrel the carboy tags of every customer whose product is stored in the barrel.

[Liquor Control and Licensing Regulation, sections 24 and 25(1)]

26.3.2 Elements of the contravention of failing to tag carboys

To allege the contravention of failing to tag carboys, an inspector must gather enough evidence to prove on a balance of probabilities that:

- a carboy was not properly tagged.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, sections 24 and 25(1); Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector observes a carboy that is not properly tagged, the inspector will gather further evidence of the contravention. The inspector may:
 - photograph carboys and tags
 - observe and document the information included on any tags
 - observe and document the stage of fermentation and contents of carboys
 - interview the licensee
 - interview staff
 - interview customers
 - seize liquor, and / or
 - obtain a copy of the licensee's appointment book.

Examples of the evidence that the inspector may gather are listed in the following table:

Element	Evidence
A carboy was not properly tagged	<ul style="list-style-type: none">• the stage of fermentation and the contents of the carboy• whether the carboy was tagged• the information on any carboy tags• whether individual carboy tags were attached to a barrel• whether carboys being used for production by employees and the licensee were clearly tagged

2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for operation of the establishment
 - whether the licensee has written policies and procedures about ensuring that carboys are tagged
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 25(1) of the regulation "Failing to tag carboy."

26.4 Allowing Consumption at the Establishment

Policy Rationale

To ensure that UBrews and UVins are not operated as liquor-primary establishments, customers are prohibited from consuming product on the premises, other than small samples consumed to ensure product quality prior to bottling.

Policy

26.4.1 No consumption other than tasting

A licensee must not permit the consumption of liquor at the establishment, other than allowing a customer to taste one or two samples of their product before bottling. Samples must not exceed 100 ml each.

[Liquor Control and Licensing Regulation, section 26]

26.4.2 Elements of the contravention of allowing consumption

To allege the contravention of allowing consumption, an inspector must gather enough evidence to prove the following elements on a balance of probabilities:

- a customer consumed product at the establishment, and
- the licensee knew or ought to have known that the customer was consuming product.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 26; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that the licensee is allowing customers to consume product at the establishment, the inspector will gather further evidence of each element of the contravention identified in policy 26.4.2 above. The inspector may:

- pose as a customer during an inspection
- observe and document the activities of the licensee, staff and customers
- interview the licensee
- interview staff, and / or
- interview customers.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
A customer consumed product at the establishment	<ul style="list-style-type: none"> • the type of product consumed • the volume of product consumed • the name of the customer • where the consumption occurred
The licensee knew or ought to have known that the customer was consuming product	<ul style="list-style-type: none"> • whether the licensee posted signs to remind customers that consumption was prohibited • whether the licensee informed customers that consumption was prohibited • whether the licensee or staff were aware of the consumption • whether the licensee provided glasses or otherwise encouraged or accommodated the consumption

2. In addition to the evidence gathered to determine whether the licensee "allowed" the contravention outlined in procedure 1 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for operation of the establishment
 - whether the licensee has written policies and procedures about consumption of product at the establishment
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 26(1) of the regulation "Allowing consumption in the establishment."

26.5 Allowing Someone other than the Customer to Bottle Product

Policy Rationale

The customer who initially paid for the ingredients and services at the UBrew or UVin was informed and signed an acknowledgment that product could only be used for personal consumption or consumption by others at no charge. To ensure that UBrew or UVin product is used for legitimate purposes, the regulation directs that only the customer may bottle finished product.

Policy

26.5.1 Customer required to bottle own product

The licensee must not allow anyone other than the customer, or a person assisting that customer, to bottle the finished product. Any people assisting the customer must not be associated with the operation of the establishment and must not bottle product if the customer is not present.

[Liquor Control and Licensing Regulation, sections 23(2) and 27]

26.5.2 Elements of the contravention of allowing someone other than the customer to bottle product

To allege the contravention of allowing someone other than the customer to bottle product, an inspector must gather enough evidence to prove the following elements on a balance of probabilities:

- someone other than the customer bottled the product, and
- the licensee knew or ought to have known that someone else was bottling the product.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, sections 23(2) and 27; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that the licensee is allowing someone other than the customer to bottle above. The inspector may:
 - pose as a customer during an inspection
 - observe and document the activities of the licensee, staff and customers
 - interview the licensee
 - interview staff
 - interview customers
 - obtain a copy of the invoice for the product, and / or
 - obtain a copy of the appointment book for the establishment.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
Someone other than the customer bottled product	<ul style="list-style-type: none"> the name of the person who did the bottling the name of the customer whether the person was assisting the customer
The licensee knew or ought to have known that someone other than the customer was bottling product	<ul style="list-style-type: none"> whether the licensee was aware that someone other than the customer bottled the product description of any procedures the licensee had in place to ensure that only customers bottle product

- In addition to the evidence gathered to determine whether the licensee "allowed" the contravention outlined in procedure 1 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for operation of the establishment
 - whether the licensee has written policies and procedures about bottling by people who are not customers
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
- Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 27 of the regulation "Allowing someone other than the customer to bottle product."

26.6 Failing to Ensure that the Customer Removes Product

Policy Rationale

To ensure that product is not left for the licensee or another person to sell or consume after bottling, customers must immediately remove product after it is bottled.

Policy

26.6.1 Removal of finished product required

Unless the licensee is moving the product for fermentation and aging to a secondary storage site that has been approved by the general manager, a licensee must not remove product or permit another person to remove the customer's product before bottling. A licensee must ensure that customers remove product immediately after bottling. A licensee may not remove or deliver the beer or wine product of a customer after bottling. The licensee must not store product that has been bottled.

[Liquor Control and Licensing Regulation, sections 25(2) and 28]

26.6.2 Trading or exchange of finished product

The licensee must not encourage trading of product among customers by:

- providing a “trading rack” where a customer leaves some of their product in the licensed establishment after bottling and in exchange takes other customer’s product that has been left behind in the trading rack, or
- allowing notices to be posted regarding trading.

A licensee may allow customers to exchange product at the time of bottling provided the product is removed from the establishment immediately after bottling.

[Liquor Control and Licensing Act, section 12.1(3); Liquor Control and Licensing Regulation, section 28(1); Liquor Control and Licensing Branch Policy]

26.6.3 Elements of the contravention of failing to ensure that the customer removes product

To allege the contravention of failing to ensure that the customer removes product, an inspector must gather enough evidence to prove on a balance of probabilities that:

- a customer did not immediately remove bottled product.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 12.1(3); Liquor Control and Licensing Regulation, sections 25(2) and 28; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a customer has not immediately removed bottled product, the inspector will gather evidence of the contravention. The inspector may:
 - pose as a customer during an inspection
 - observe and document the activities of the licensee, staff and customers
 - interview the licensee
 - interview staff
 - interview customers
 - obtain a copy of the appointment book and invoices for the establishment to determine which customer the product belongs to, and / or
 - seize bottled product left at the establishment.

Examples of the evidence that the inspector may gather are listed in the following table:

Element	Evidence
A customer did not immediately remove bottled product	<ul style="list-style-type: none"> • the name of the customer • whether the customer intentionally left the bottled product behind • volume and type of product • date the product was bottled • where the bottled product was located

2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - whether the licensee or staff were aware that product had been left at the establishment
 - whether the licensee or staff had set up a trading rack or otherwise encouraged customers to leave bottled product
 - the name and duties of the person who was the directing mind of the licensee responsible for operation of the establishment
 - whether the licensee has written policies and procedures about immediately removing bottled product
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 28(1) of the regulation "Failing to ensure that the customer removes product."

26.7 Allowing a Minor to Produce Product

Policy Rationale

The prohibitions respecting minors:

working at
producing product at, or
entering a UBrew or UVin

are meant to guard against consumption of liquor by minors. Public safety issues associated with consumption of liquor by minors are outlined in Section 11 Minors.

Policy

26.7.1 Minors in UBrews and UVins

A licensee must not employ a minor in the establishment unless the minor is under the direct and continual supervision of the licensee or an adult employee. A licensee must ensure that minors do not manufacture product at the establishment.

A minor may enter the retail part of the establishment or another business attached to the establishment without being accompanied by a parent or guardian. A minor may not be in the area of the establishment where liquor is produced or bottled without being accompanied by a parent or guardian.

[Liquor Control and Licensing Regulation, section 30]

26.7.2 Elements of the contravention of allowing a minor to produce product

To allege the contravention of allowing a minor to produce product, an inspector must gather enough evidence to prove the following elements on a balance of probabilities:

- the person was a minor, and
- the person produced product at the establishment.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 30; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that the licensee is allowing a minor to produce product, the inspector will gather evidence of each element of the contravention identified in policy 26.7.2 above. The inspector may:
 - observe and document the activities of the licensee, staff and the minor
 - ask the person for two pieces of identification
 - interview the licensee
 - interview staff
 - interview the minor and obtain name and contact information, and / or
 - seize liquor being produced by the minor.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The person was a minor	<ul style="list-style-type: none"> • name and date of birth of minor • name and date of birth on identification • whether identification is forged, altered or counterfeit • whether identification belongs to someone else
The person produced product at the establishment	<ul style="list-style-type: none"> • type of product being produced by the minor • whether the minor had paid for ingredients or services • whether the minor had been issued an invoice and signed an acknowledgment • whether the minor was accompanying a parent or guardian who was producing product at the establishment

2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - whether the licensee or staff asked the person for two pieces of identification before allowing them to produce product
 - the name and duties of the person who was the directing mind of the licensee responsible for operation of the establishment
 - whether the licensee has written policies and procedures about minors
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 30 of the regulation "Allowing a minor to produce product."

26.8 Prohibited Advertising

Policy Rationale

To ensure that licensees are not representing their establishments as places where customers can purchase finished product, the content of advertisements for UBrews and UVins is limited by the regulation.

Policy

26.8.1 Advertising

A licensee may only do the following in an advertisement for a UBrew or UVin:

- state that the establishment is licensed to provide goods, facilities or services for customers to produce or manufacture beer, wine or cider
- state the name of the establishment and its address and phone number
- advertise the availability of specific types of ingredients for producing or manufacturing wine, beer or cider, and / or
- provide a list of the goods, facilities and services available and their prices. The licensee must clearly state that the advertised price represents the cost of producing and manufacturing product at the establishment and not the cost of finished product.

[Liquor Control and Licensing Regulation, sections 32(1) and (2)]

26.8.2 Providing product samples

A licensee may not provide customers with a sample of product that is, or may be, produced at the establishment.

[Liquor Control and Licensing Regulation, section 32(3)]

26.8.3 Promotions and discounts

A licensee may advertise products on sale but may not advertise volume discounts for making more than one batch at a time. A licensee may offer promotions or discounts to known customers through newsletters or other similar forms of communication, such as:

- discount programs for frequent users
- "company money" that can be reimbursed against future purchases
- volume discounts to individuals or groups who make more than one batch at a time, or
- contests with free product or free services as the prize.

[Liquor Control and Licensing Act, section 12.1(3); Liquor Control and Licensing Branch Policy]

26.8.4 Elements of the contravention of prohibited advertising

To allege the contravention of prohibited advertising, an inspector must gather enough evidence to prove on a balance of probabilities that:

- the advertising was not authorized by the regulation or the terms and conditions of the licence.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 12.1; Liquor Control and Licensing Regulation, section 32; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that the licensee's advertising is not authorized by the regulation or the terms and conditions of the licence, the inspector will gather evidence of the contravention. The inspector may:
 - observe and document the actions of the licensee and staff

- interview the licensee
- interview staff, and / or
- obtain a copy of the advertisement.

Examples of the evidence that the inspector may gather are listed in the following table:

Element	Evidence
The advertising was not authorized by the regulation or the terms and conditions of the licence	<ul style="list-style-type: none"> • whether the licensee was providing product samples • type and volume of product samples provided • details of how the advertising contravened the regulations or the terms and conditions of the licence • whether the advertising referred to the price of finished product

2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for advertising
 - whether the licensee has written policies and procedures about advertising
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 32 of the regulation "Prohibited advertising."

26.9 Operating Outside of Licensed Hours

Policy Rationale

As with all types of licensed establishments, the licensed hours of operation for UBrews and UVinS reflect community standards regarding late night noise, traffic and parking. Operating outside of these hours may disturb neighbouring residents and businesses.

Policy

26.9.1 Hours of operation

Unless limited by the general manager, the maximum hours of operation of a UBrew or UVin establishment are 9 a.m. to 11 p.m.

[Liquor Control and Licensing Regulation, section 33]

26.9.2 Elements of the contravention of operating outside of licensed hours

To allege the contravention of operating outside of licensed hours, an inspector must gather enough evidence to prove on a balance of probabilities that:

- the UBrew or UVin was operating outside of its licensed hours.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 33; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that the licensee is operating outside of licensed hours, the inspector will gather evidence of the contravention. The inspector may:
 - review the terms and conditions of the licence
 - schedule and conduct an inspection of the establishment outside of licensed hours
 - interview the licensee
 - interview staff, and / or
 - interview people in the vicinity of the establishment.

Examples of the evidence that the inspector may gather are listed in the following table:

Element	Evidence
The UBrew or UVin was operating outside of its licensed hours	<ul style="list-style-type: none"> • time on the inspector's watch • time indicated by any clocks in the establishment • how many staff and customers were present • whether customers were producing product • whether the licensee or staff were producing product • whether the licensee or staff were trying to remove people from the establishment

2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for operation of the establishment
 - whether the licensee has written policies and procedures about hours of operation
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 33 of the regulation "Operating outside of licensed hours."

26.10 Failing to Comply with Record-keeping and Reporting Requirements

Policy Rationale

To ensure compliance with the Act, regulation and terms and conditions of the licence, UBrew and UVin licensees are required to maintain a variety of records and have them available for inspection. The regulation also requires UBrew and UVin licensees to submit semi-annual reports indicating the volume of product produced in the establishment. The branch reviews these reports for any significant change in product volumes that may indicate illicit liquor production.

Policy

26.10.1 Record-keeping and reporting requirements

A licensee must maintain and have available for inspection, for at least three years, the following records:

- purchase records for all ingredients used in the production and manufacturing of product

- copies of invoices given to customers
- records of product manufactured by the licensee or employees for their own use, and
- records detailing the disposition of spoiled, spilled, unclaimed or returned product.

If a licensee has a wort licence for the establishment, the licensee must ensure the wort licence is available for inspection at all times.

A licensee must submit semi-annual reports to the general manager outlining the volume of product manufactured or produced in the establishment.

[Liquor Control and Licensing Regulation, section 31]

26.10.2 Elements of the contravention of failing to comply with record-keeping and reporting requirements

To allege the contravention of failing to comply with record-keeping and reporting requirements, an inspector must gather enough evidence to prove one of the following elements on a balance of probabilities:

- the licensee failed to make records available for inspection
- the licensee failed to maintain records, or
- the licensee failed to submit semi-annual reports.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 31; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that the licensee has failed to comply with record-keeping and reporting requirements, the inspector will gather evidence of the contravention. The inspector may:
 - contact headquarters to obtain copies of records and reports on the headquarters establishment file
 - ask the licensee to produce the document
 - inspect the establishment
 - interview the licensee, and / or
 - interview staff.

Examples of the evidence that the inspector may gather for each contravention are listed in the following table:

Element	Evidence
The licensee failed to make records available for inspection	<ul style="list-style-type: none"> • copies of any records produced by the licensee • details of the request for records
The licensee failed to maintain records	<ul style="list-style-type: none"> • copies of any records produced by the licensee • whether the records are authentic or forged
The licensee failed to submit semi-annual reports	<ul style="list-style-type: none"> • copies of any reports on the headquarters file • date that the report was due

2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:

- the name and duties of the person who was the directing mind of the licensee responsible for record-keeping and reporting requirements
 - whether the licensee has written policies and procedures about maintaining records and submitting reports
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of either:
- section 31(1) of the regulation "Failing to make records available for inspection"
 - section 31(2) of the regulation "Failing to maintain records," or
 - section 31(3) of the regulation "Failing to submit semi-annual reports."

26.11 Selling Finished Product

Policy Rationale

The focus of a UBrew or UVin establishment is to provide ingredients, equipment and support for customers to make beer or wine products for their own consumption. When a licensee supplies finished product to a customer, that product is illicit liquor. Public safety issues associated with the sale of illicit liquor are outlined in Section 18 Illicit Liquor.

Policy

26.11.1 Sale of finished product

A licensee must ensure that beer or wine product is not:

- kept for sale
- offered for sale
- produced for sale, or
- sold

at the establishment.

[Liquor Control and Licensing Regulation, section 29]

26.11.2 Elements of the contravention of selling finished product

To allege the contravention of selling finished product, an inspector must gather enough evidence to prove one of the following elements on a balance of probabilities:

- the licensee kept beer or wine product for sale at the establishment
- the licensee offered beer or wine product for sale at the establishment
- the licensee produced beer or wine product for sale at the establishment, or
- the licensee sold beer or wine product at the establishment.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Regulation, section 31; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a licensee is selling finished product, the inspector will gather evidence of the contravention. The inspector may:
 - review all records and reports submitted by the licensee
 - consider whether to organize and conduct an illicit liquor inspection, in accordance with the procedures outlined in the Illicit Liquor Field Manual
 - ask an inspector who is not known to the licensee to attend at the establishment to:
 - inquire about the role of the customer and the licensee at the establishment
 - inquire about the availability and cost of finished product, and
 - if possible, arrange to purchase finished product
 - inspect the establishment
 - observe and document the activities of the licensee, staff and customers
 - interview the licensee
 - interview staff
 - interview customers
 - obtain a copy of the appointment book and invoices for the establishment
 - obtain copies of advertisements for the establishment
 - obtain copies of records detailing product manufactured by the licensee and employees
 - obtain copies of records detailing the disposition of spoiled, spilled, unclaimed or returned product
 - take samples of finished product, and / or
 - seize finished product.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee kept beer or wine product for sale at the establishment	<ul style="list-style-type: none"> whether finished product is stored in the establishment
or	
The licensee offered beer or wine product for sale at the establishment	<ul style="list-style-type: none"> whether there are untagged carboys of product or a large volume of product identified as being the product of one customer or the licensee
or	
The licensee produced beer or wine product for sale at the establishment	<ul style="list-style-type: none"> whether the advertising of the establishment indicates finished product is available whether the records of product manufactured by the licensee or employees indicates sale of finished product
or	
The licensee sold beer or wine product at the establishment	<ul style="list-style-type: none"> whether the records detailing disposition of wasted product indicate sale of finished product whether the records of volume produced at the establishment indicate sale of finished product whether the licensee offered to sell or sold finished product to the inspector or another person

2. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for operation of the establishment
 - whether the licensee has written policies and procedures about sale of finished product
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
3. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 29 of the regulation, either:
 - "Keeping for sale finished product"
 - "Offering for sale finished product"
 - "Producing for sale finished product," or
 - "Selling finished product."

SECTION 27: SECTION 69 CONTRAVENTIONS

27.0 Introduction

Section 69 of the regulation outlines specific enforcement action that the general manager must take in response to the most serious contraventions of the Act. Policies and procedures for identifying these contraventions are included in this section under the following headings:

Permitting Sale, Service or Consumption of Liquor While Licence is Suspended, and
Failing to Permit Entry.

27.1 Permitting Sale, Service or Consumption of Liquor While Licence is Suspended

Policy Rationale

A licensee who commits this contravention manifests a flagrant and utter disregard of the law. Disregarding the general manager's decision to suspend a licence undermines the branch enforcement structure. For this reason, the general manager will act quickly and conclusively when a licensee is permitting the sale, service or consumption of liquor while under suspension.

Policy

27.1.1 Enforcement action if a licensee permits the sale, service or consumption of liquor while the licence is under suspension

If a licensee permits the sale, service or consumption of liquor while the licence is under suspension, the general manager must cancel the licence, unless:

- the general manager approves a transfer of the licence and suspends the licence until completion of the transfer, or
- the general manager is satisfied that it is in the public interest not to cancel the licence and suspends the licence for at least 15 days.

[Liquor Control and Licensing Act, section 20; Liquor Control and Licensing Regulation, section 69 and schedule 4]

27.1.2 Elements of the contravention of permitting the sale, service or consumption of liquor while the licence is under suspension

To allege the contravention of permitting the sale, service or consumption of liquor while the licence is under suspension, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee knew or ought to have known that liquor was being sold, served or consumed, and
- the licence was suspended.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 20; Liquor Control and Licensing Regulation, section 69 and schedule 4; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that liquor is being sold, served or consumed in an establishment when the licence is suspended, the inspector will gather evidence of each element of the contravention identified in policy 27.1.2 above. The inspector may:
 - review the terms of the licence suspension
 - contact the police and ask them to participate in an inspection of the establishment
 - observe and document the activities of the licensee and staff
 - interview the licensee
 - interview staff
 - interview patrons
 - seize liquor
 - take samples of liquor
 - obtain sales receipts, and / or
 - contact the Liquor Distribution Branch to determine if the licensee purchased liquor while the licence was suspended.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee knew or ought to have known that liquor was being sold, served or consumed	<ul style="list-style-type: none"> • whether a suspension sign was in place • whether the establishment was open for business • how many patrons were in the establishment • how many staff were in the establishment • whether liquor was being served or consumed • how many patrons were being served or consuming liquor • whether there was open liquor on tables or in the bar area • whether liquor cabinets were locked • whether glasses contained liquor or liquor residue • whether sales receipts indicate the sale of liquor • whether patrons were intoxicated • location of patrons who were consuming liquor
The licence was suspended	<ul style="list-style-type: none"> • whether the licence was suspended in whole or in part • dates of the suspension • terms and conditions of the suspension

2. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 20 of the Act "Permitting sale, service or consumption of liquor while licence suspended."
3. As soon as possible after identifying this contravention and regardless of the day of the week or whether the inspector is on duty, the inspector will:
 - contact the regional manager to report the contravention, and
 - prepare a notice of enforcement action for the regional manager outlining the evidence gathered during the inspection. The notice will recommend that the general manager consider cancellation of the licence.

4. The regional manager will review and discuss the notice with the inspector and confirm or revise the proposed penalty.
5. The inspector will send the notice of enforcement action as soon as possible by registered mail to the licensee.
6. The regional manager will contact the case management administrator to request an expedited hearing on the contravention.

27.2 Failing to Permit Entry

Policy Rationale

Failing to allow an inspector or peace officer to enter a licensed establishment undermines the branch enforcement structure. A licensee who commits this contravention manifests a flagrant and utter disregard for the law. For these reasons, the general manager will act quickly and conclusively when a licensee fails to permit entry to an inspector or peace officer. The regulation sets out serious consequences for this contravention.

Policy

27.2.1 A licensee must allow the general manager or delegate to inspect

A licensee must allow the general manager or a delegate of the general manager to inspect immediately upon request:

- all premises used for the storage of liquor including off-site premises, and
- the licensed establishment.

[Liquor Control and Licensing Act, section 73(1)(b)]

27.2.2 A licensee must admit a peace officer

A licensee must immediately admit a peace officer who, on reasonable and probable grounds, believes that liquor is unlawfully possessed or kept, or possessed or kept for unlawful purposes.

[Liquor Control and Licensing Act, section 67]

27.2.3 Enforcement action if a licensee fails to permit entry

If a licensee:

- obstructs or attempts to obstruct an entry or search by a peace officer
- refuses or fails to admit immediately a peace officer demanding entry, or
- neglects or refuses to allow premises to be inspected by the general manager or delegate

the general manager must cancel the licence, unless:

- the general manager approves a transfer of the licence and suspends the licence until completion of the transfer, or
- the general manager is satisfied that it is in the public interest not to cancel the licence and suspends the licence for at least 15 days.

[Liquor Control and Licensing Act, sections 67 and 73(1)(b); Liquor Control and Licensing Regulation, section 69 and schedule 4]

27.2.4 Elements of the contravention of failing to permit entry

To allege the contravention of failing to permit entry, an inspector must gather enough evidence to prove one of the following elements on a balance of probabilities:

- the licensee obstructed or attempted to obstruct an entry or search by a peace officer
- the licensee refused or failed to admit immediately a peace officer demanding entry, or
- the licensee neglected or refused to allow premises to be inspected by the general manager or delegate.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 67 and 73(1)(b); Liquor Control and Licensing Regulation, section 69 and schedule 4; Liquor Control and Licensing Branch Policy

Procedures

1. If the licensee fails to permit immediate entry to an inspector, the inspector will make another request for entry into the licensed establishment or premises associated with the establishment.
2. If the licensee again fails to permit immediate entry, the inspector will contact the police and ask them to attend at the establishment and request entry into the establishment. If the licensee allows the police to enter the establishment, the inspector will accompany the police into the establishment.
3. The inspector will gather further evidence of the contravention. The inspector may:
 - obtain copies of police notes and reports regarding the incident
 - observe and document the activities of the licensee, patrons and staff
 - interview the licensee, and / or
 - interview staff.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

Element	Evidence
The licensee obstructed or attempted to obstruct an entry or search by a peace officer or The licensee refused or failed to admit immediately a peace officer demanding entry or The licensee neglected or refused to allow premises to be inspected by the general manager or delegate	<ul style="list-style-type: none"> • how many times the inspector requested entry • how many times the police requested entry • the names of the police officers in attendance • details of the requests for entry • when the requests for entry were made • how long it took the licensee to permit entry • the name of the staff member or licensee who refused entry • whether patrons were being admitted • the actions of the licensee when entry was demanded • whether the licensee recognized that entry was being demanded

4. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for door control at the establishment
 - whether the licensee had written policies and procedures on permitting entry to inspectors and peace officers
 - whether staff had been trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures
5. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of either:
 - section 67(3) of the Act "Refusing or failing to admit immediately a peace officer"
 - section 67(3) of the Act "Obstructing or attempting to obstruct entry or search by a peace officer," or
 - section 73(2) of the Act "Neglecting or refusing to allow premises to be inspected."
6. As soon as possible after identifying this contravention and regardless of the day of the week or whether the inspector is on duty, the inspector will:
 - contact the regional manager to report the contravention, and
 - prepare a notice of enforcement action for the regional manager outlining the evidence gathered during the inspection. The notice will recommend that the general manager consider cancellation of the licence.
7. The regional manager will review and discuss the notice with the inspector and confirm or revise the proposed penalty.
8. The inspector will send the notice of enforcement action as soon as possible by registered mail to the licensee.
9. The regional manager will contact the case management administrator to request an expedited hearing on the contravention.

SECTION 28: OTHER CONTRAVENTIONS

28.0 Introduction

Item 46 of the penalty schedule outlines minimum penalty ranges for any contravention of the Act, regulation or terms and conditions of the licence that is not specifically referred to elsewhere in the schedule. It would be impossible to include detailed policies and procedures in this manual for the wide range of contraventions that are included under this item. However, because of the specialized nature of their operations, this section outlines policies and procedures for identifying a number of contraventions that apply exclusively to the consumption of liquor at wineries, or wineries and breweries, under the heading:

- Wineries and Breweries.

This manual focuses on enforcement action resulting from a contravention of the Act, regulations or the terms and conditions of a licence. However, the general manager may take enforcement action under section 20 of the Act for a variety of reasons, including the existence of a circumstance that would prevent the issue of a licence. Section 16(1)(a) of the Act states that a licence must not be issued to a person who is not "fit and proper." While not technically a "contravention," inspectors and investigators may be involved in gathering evidence to support enforcement action where a licensee is no longer fit and proper to hold a licence. Policies and procedures for gathering this evidence and recommending enforcement action are outlined in this section under the heading:

- Not Fit and Proper.

28.1 Wineries and Breweries

Policy Rationale

Although wineries are primarily manufacturers of liquor, the Act permits liquor consumption in designated areas for the purpose of promoting B.C. wine products. As with any other category of licence that sells liquor, the branch will monitor wineries to ensure they comply with the Act, the regulation, and the terms and conditions of the licence. This means, for example, wineries must not serve liquor to minors or allow intoxication or overcrowding at their establishments.

The specific policies that regulate the consumption of liquor at wineries and breweries reflect the unique nature of their operations. The total volume of product that a winery or brewery can sell as samples to a person during one day is restricted by regulation to ensure these licensees do not operate designated sampling areas as liquor-primary or food-primary establishments. Policies respecting licensed picnicking areas are designed to ensure that wineries are able to supervise consumption and maintain the informal nature of these areas. Picnicking areas are not meant to be operated as liquor-primary or food-primary establishments.

The Act allows wineries and breweries to apply for special occasion licences in order to promote their products through special events. Other licensees and the public at large may only use special occasion licences for non-profit events or events held to raise funds for a charitable purpose. Wineries may also apply for a special event endorsement that allows them to host special events in designated areas at the winery site. The branch has designed policies regarding the use of special occasion licences for wineries and breweries to ensure that these establishments are not able to act as food-primary establishments through the use of special occasion licences.

Policy

28.1.1 Sampling rooms

A brewery, winery or distillery may apply to the general manager to designate an area as a sampling room in which it may present to the public samples of its products to taste. The establishment may offer samples for free or for a charge. The maximum total volume of product samples that an establishment may sell to a person during a day is 150 ml for a winery and 375 ml for a brewery.

[Liquor Control and Licensing Act, section 53(1); Liquor Control and Licensing Regulation, section 20]

28.1.2 Picnicking areas at wineries

A winery with a picnicking endorsement may operate an outdoor picnic area and the following terms and conditions apply:

- patrons may only consume liquor in the picnicking area during daylight hours
- the picnicking area must be the size approved by the general manager and defined by a clearly identifiable boundary. Boundaries may be either natural or constructed and must allow picnickers to easily discern the boundaries of the area where they may consume wine.
- a winery may not host special events in the picnicking area unless the winery has obtained a special occasion licence for the event and suspended their picnicking endorsement for the duration of the event
- minors are allowed in the picnicking area unless otherwise restricted
- the winery may not sell or serve wine in the picnicking area. Customers must purchase wine from the winery and carry it to the picnicking area, and
- customers must not consume liquor in the picnicking area unless it was produced at the winery.

[Liquor Control and Licensing Regulation, section 18.1; Liquor Control and Licensing Branch Policy]

28.1.3 Special event endorsement

A winery with a special event endorsement may host special events in a designated indoor or outdoor special event area at the winery site. Wineries may sell and serve BC wines, cider and wine coolers in the special event area. Minors are not allowed in the special event area unless they are accompanied by a parent or guardian or are employed as entertainers.

[Liquor Control and Licensing Regulation, section 18]

28.1.4 Tour endorsement

A winery with a tour endorsement may serve or sell samples of its wine in a designated indoor or outdoor tour area to patrons who are touring the winery.

[Liquor Control and Licensing Regulation, section 18.1]

28.1.5 Special occasion licences

A winery or brewery may obtain a special occasion licence in order to conduct a tasting to acquaint the public with its products. Licensees may make some profit from these events, so long as the prime purpose of the event is to promote their products. Where a special event at a winery or brewery is being hosted by a third party, and is primarily for a purpose other than to acquaint the public with that winery's or brewery's products, that third party must obtain the special occasion licence for the event.

[Liquor Control and Licensing Act, sections 7 and 53(2); Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 7 and 53; Liquor Control and Licensing Regulation, sections 18, 18.1 and 20; Liquor Control and Licensing Branch Policy

Procedures

1. If an inspector suspects that a contravention is occurring at a winery or brewery involving sampling, special events or use of the special event, tour or picnicking areas, the inspector will document and observe the activities of the licensee, patrons and staff before notifying the licensee of their concerns.
2. The inspector will gather further evidence of the contravention. The inspector may:
 - interview the licensee
 - interview staff
 - interview patrons
 - review the terms and conditions of the licence or special occasion licence
 - review the approved floor plan or plot drawing, and / or
 - photograph or sketch the area.

Examples of the evidence that the inspector may gather for each type of contravention are listed in the following table:

Contravention	Evidence
Failing to comply with sampling terms and conditions	<ul style="list-style-type: none"> • whether the licence approved a sampling area • whether the sampling area corresponded with the area designated on the approved floor plan • whether patrons were being charged for samples • volume of samples given to patrons • number of patrons in the sampling area
Failing to comply with picnicking area terms and conditions	<ul style="list-style-type: none"> • size of the picnicking area • whether the location of the picnicking area corresponded with the approved plot drawing • whether the picnicking area was defined by a clearly identifiable boundary • description of boundary • whether the licensee was serving or selling liquor in the picnicking area • type of liquor being consumed in the picnicking area • whether customers were consuming liquor that was not purchased from the licensee • whether the picnicking area was protected from the elements • whether patrons were consuming liquor in the picnicking area outside of daylight hours
Failing to comply with tour area terms and conditions	<ul style="list-style-type: none"> • whether the location of the tour area corresponded with the approved floor plan or plot drawing • whether patrons were consuming wine that was not produced at the winery • whether patrons were consuming wine in the tour area outside of daylight hours

Contravention	Evidence
Failing to comply with terms and conditions for special events	<ul style="list-style-type: none"> • whether patrons were consuming liquor other than BC wines in a special event area • whether unaccompanied minors were present in the special event area • whether the special event was licensed under a special occasion licence • details of the special occasion licence, including licensee name • whether the primary purpose of the special event was to acquaint the public with the winery or brewery's products

3. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
 - the name and duties of the person who was the directing mind of the licensee responsible for the sampling area, the picnicking area, the tour area or special events
 - whether the licensee had written policies and procedures on samples, tours, use of the picnicking area or special events
 - whether staff were trained on these policies and procedures, and / or
 - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging the appropriate contravention, for example:
 - section 20 of the regulation "Charging for more than the maximum volume of samples"
 - section 18.1(6) of the regulation "Picnicking area not clearly defined by a boundary," or
 - section 12 of the Act "Selling or serving liquor in a picnicking area."

28.2 Not Fit and Proper

Policy Rationale

The integrity of the liquor control regime must be protected from involvement by criminal interests seeking to use licensed establishments for illegal purposes. At the time of licensing and at any time during the term of the licence, the general manager may assess whether a licensee has any criminal convictions, criminal associations or previous contraventions of the Act and regulation. These and other factors may indicate whether the licensee is a fit and proper person who is likely to comply with the terms and conditions of a liquor licence.

Policy

28.2.1 General manager may take action against a licensee who is not fit and proper

The general manager may take action against a licensee if, in the general manager's opinion, the person is not fit and proper to hold a liquor licence. This may include cancelling the licence or ordering the licence transferred to a person at arms length from the licensee.

[Liquor Control and Licensing Act, sections 16(1) and 20]

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28.2.2 Determining whether a person is fit and proper

A fit and proper person must:

- be of good reputation and character, who does not have a history of behaviour that would render the person unsuitable to hold a licence
- not be involved in criminal activities or associated with anyone involved in criminal activities
- not be a member, or meaningfully associated with a member, of an organized crime group, and
- have financial integrity. The funding involved or in support of the licence must not be from a criminal source or associated with any criminal source.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 16 and 20; Liquor Control and Licensing Branch Policy

Procedures

1. Investigators are responsible for conducting investigations into the fit and proper status of licensees.
2. Investigators will complete a staff report based on the information gathered during the investigation and submit it to the manager of investigations and the two deputy general managers.
3. If the report indicates that the licensee may not be fit and proper, the contents of the report will be disclosed to the licensee and a Liquor Licensing Committee hearing may be arranged.
4. The licensee will have an opportunity to respond to the investigation report.

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